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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 870

R. E. COLLINS, JOHN C. CORBETT AND FRED B. STEWART ET AL.,

Appellants,

vs.

YOSEMITE PARK AND CURRY CO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

STATEMENT AS TO JURISDICTION.

U. S. WEBB,
Attorney General of California,
SHERRET L. SEPTON,
Deputy Attorney General of California.

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IN THE

DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

No. 4165-R

YOSEMITE VALLEY AND CURRY CO., A CORPORATION,
Plaintiff,

vs.

R. E. COLLINS, JOHN C. CORBETT, FRED B. STEWART, RAY EDGAR, HARRY B. RILEY AND U. S. WEBB,
Defendants.

APPELLANTS' STATEMENT OF GROUNDS FOR JURISDICTION ON APPEAL AND APPELLEE'S WAIVER OF REPLY THERETO.

To the Honorable Judges of the Above Entitled District Court:

The above named defendants and appellants and each of them, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause and the final decree herein on appeal and particularly disclosing the basis therefor, respectfully represent:

(a) That the statutory provision believed to sustain such jurisdiction is Section 380 of Title 28 of the United States

Code, Annotated (Judicial Code, Section 266), and particularly to the last clause thereof which reads as follows:

> "• • • and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

(b) 1. That the statute of the State of California, the validity of which is involved, is the Alcoholic Beverage Control Act, Statutes of 1935, Chapter 330, page 1123, as amended by the Statutes of 1937, Chapter 758, page 2126, and that a verbatim copy thereof is attached hereto and marked Exhibit A.

2. That there is also involved the validity of the following statute of the United States, Section 1 of the Act of June 11, 1906 (34 Statutes 831), a verbatim copy of which is attached hereto and marked as Exhibit B.

3. That there is also involved the validity of the following statute of the United States: Section 1 of the Act of June 2, 1920 (41 Statutes 731), a verbatim copy of which is attached hereto and marked as Exhibit C.

(c) That the date of the final decree sought to be reviewed is November 18, 1937, and that the date upon which the application for appeal is presented herein is January 7, 1938.

(d) That the nature of the above entitled case was an application for an injunction by the complainant against the members of the State Board of Equalization of the State of California and against U. S. Webb, Attorney General of the State of California, to enjoin and restrain said State officials from enforcing within the Yosemite National Park the provisions of the Alcoholic Beverage Control Act and particularly to restrain said officials from seizing certain alcoholic beverages imported into said Park from out-

side the State of California, it being claimed by the complainant and appellee that exclusive jurisdiction over said Park was in the Federal Government by virtue of certain Acts of Congress assuming exclusive jurisdiction over said Park, and that the Alcoholic Beverage Control Act was void and ineffective insofar as it attempted to cover the said Park, being in conflict with said Federal Acts; it being claimed on the other hand by your appellants that said Acts of Congress are void and that the Alcoholic Beverage Control Act applies within all the territorial limits of California, particularly as to imports from without the State in view of the Twenty-first Amendment to the United States Constitution.

(e) That the cases believed to sustain the jurisdiction of this appeal are as follows:

Oklahoma Gas & Electric Co. v. *Oklahoma Packing Co.*, 292 U. S. 386;

Stratton v. *St. Louis S. W. Ry. Co.*, 292 U. S. 10;

Silas Mason Co. v. *Tax Com. Oct. Term 1937*, Nos. 7-8.

(f) A copy of the opinion of the District Court is set forth hereafter verbatim as Exhibit D.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 380 of Title 28 of the United States Code, Annotated (Judicial Code, Section 266, as amended).

Respectfully submitted,

U. S. WEBB,
Attorney General of the
State of California,
By SEIBERT L. SEFTON,
Deputy,
Attorneys for Defendants and Appellants.

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EXHIBIT "A".

Alcoholic Beverage Control Act

OF THE

State of California

Chapter 330, Statutes of 1935

AS AMENDED

CHAPTERS 681 AND 758, STATUTES OF 1937

AND

Related Constitutional Provisions

Published Under Authority of
STATE BOARD OF EQUALIZATION

JOHN C. CORBETT, San Francisco.....*First District*
FRED E. STEWART, Oakland.....*Second District*
R. E. COLLINS, Chairman, Redding.....*Third District*
RAY EDGAR, Dana Point.....*Fourth District*
HARRY B. RILEY, Long Beach.....*Controller*
DIXWELL L. PIERCE.....*Secretary*
GEORGE M. STOUT.....*State Liquor Administrator*

CALIFORNIA STATE PRINTING OFFICE
GEORGE H. MOORE, STATE PRINTER
SACRAMENTO, 1937

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UNITED STATES CONSTITUTIONAL AMENDMENT No. XXI.

REPEAL OF EIGHTEENTH AMENDMENT.

§ 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

§ 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

§ 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by convention in the several States, as provided in the Constitution within seven years from the date of the submission hereof to the States by the Congress.

History.—This amendment to the Federal Constitution became effective December 5, 1933.

Imposition of importer's license fee constitutional.—The provision of the Alcoholic Beverage Control Act imposing a license fee of $500 for the privilege of importing beer within the State does not violate the Federal Constitution. The provision is valid under section 2 of the Twenty-first Amendment. (*State Board of Equalization* vs. *Young's Market Company* (1936), 299 U. S. 59.)

CALIFORNIA CONSTITUTIONAL AMENDMENT.

ARTICLE XX.

STATE CONTROL OF LIQUOR SALES.

SEC. 22. The State of California, subject to the Internal Revenue Laws of the United States, shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of intoxicating liquor within the State, and subject to the laws of the United States regulating commerce between foreign nations and among the States shall have the exclusive right and power to regulate the importation into and exportation from the State, of intoxicating liquor. Intoxicating liquors, other than beers, shall not be consumed, bought, sold, or otherwise disposed of for consumption on the premises, in any public saloon, public bar or public barroom within the State; provided, however, that subject to the aforesaid restriction, all intoxicating liquors may be kept and may be bought, sold, served, consumed, and otherwise disposed of in any bona fide hotel, restaurant, cafe, cafeteria, railroad dining or club car, passenger ship, or other public eating place, or in any bona fide club after such club has been lawfully operated for not less than one year. The State Board of Equalization shall have the exclusive power to license the manufacture, importation and sale of intoxicating liquors in this State, and to collect license fees or occupation taxes on account thereof and shall have the power, in its discretion, to deny or revoke any specific liquor license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals. It shall be unlawful for any person other

than a licensee of said board to manufacture, import or sell intoxicati liquors in this State. Until the Legislature shall otherwise provi the privilege of keeping, buying, selling, serving, and otherwise disp ing of intoxicating liquors in bona fide hotels, restaurants, cafes, ca terias, railroad dining or club cars, passenger ships, and other pub eating places, and in bona fide clubs after such clubs have been lawful operated for not less than one year, and the privilege of keepi buying, selling, serving, and otherwise disposing of beers on a premises open to the general public shall be licensed and regulat under the applicable provisions of the so-called State Liquor Cont Act, California Statutes 1933, Chapter 658, in so far as the same a not inconsistent with the provisions hereof, and excepting that t license fee to be charged bona fide hotels, restaurants, cafes, cafeteri railroad dining or club cars, passenger ships, and other public eati places, and any bona fide clubs after such clubs have been lawful operated for not less than one year, for the privilege of keeping, buyi selling, or otherwise disposing of intoxicating liquors other than bee and wines, shall be $250.00 per year, or $62.50 per quarter-annum f seasonal businesses, subject to the power of the State Board of Equaliz tion to change such fees.

The Legislature may authorize, subject to reasonable restriction the sale in retail stores of liquor contained in the original package where such liquor is not to be consumed on the premises where sol

The Legislature shall provide for apportioning the amounts co lected for license fees or occupation taxes under the provisions here between the State and the cities, counties and cities and counties the State, in such manner as the Legislature may deem proper.

All constitutional provisions and laws inconsistent with the prov sions hereof are hereby repealed.

History.—On November 8, 1932, the people of the State of Californ repealed the Wright Act which enforced the provisions of the Eighteen Amendment to the Constitution of the United States and the provisions of t Volstead Act. Section 22 was added to Article XX of the State Constitution the same time.

On November 6, 1934, the people of the State of California adopted amendment to section 22, Article XX of the State Constitution. This sectio in its present form is set forth above.

License tax by municipality void after December 5, 1933.—Subsequent April 6, 1933, and prior to December 5, 1933, the operative date of section 22 Article XX of the State Constitution, a municipal corporation, as well as the Sta had the right to license, for revenue, dealers in alcoholic liquors. (*Los Angeles Bre ing Co.* vs. *City of Los Angeles* (1935), 8 Cal. App. (2d) 379).

After December 5, 1933, however, a municipal corporation did not ha power to impose a license tax for the purpose of revenue upon such dealers view of section 22 of Article XX, which conferred upon the State the "exclusi right and power to control license and regulate the manufacture, sale * * and disposition of intoxicating liquors within the State * * *." (*Los Angel Brewing Co.* vs. *City of Los Angeles* (1935), 8 Cal. App. (2d) 391.)

Payments made after December 5, 1933, for liquor license tax stamps we made involuntarily when the payment was required by a city ordinance imposi severe civil and criminal penalties for failure to pay the tax and the payment wa accompanied by a written protest. (*Vitale* vs. *City of Los Angeles* (1936). 1 Cal. App. (2d) 704.)

Alcoholic Beverage Control Act

An act to license, regulate and control the manufacture, transportation, sale, purchase, possession and disposition of alcoholic beverages; to levy an excise tax on the sale of alcoholic beverages; to provide for the licensing of the manufacture, distribution and sale of alcoholic beverages; to promote temperance in the use of alcoholic beverages; to adopt and enforce unfair trade practice regulations and price posting provisions regulating the sale of alcoholic beverages; to prescribe penalties for the violation of this act; to make an appropriation for the enforcement of this act; to take effect immediately. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added the provisions respecting temperance and unfair trade practice and price posting regulations.

Approved June 13, 1935. Stats. 1935, p. 1123; amended by Stats. 1937, ch. 681 and ch. 758.

SHORT TITLE; PURPOSES OF ACT.

SECTION 1. This act shall be deemed an exercise of the police powers of the State, for the protection of the safety, welfare, health, peace and morals of the people of the State; to eliminate the evils of unlicensed and unlawful manufacture, selling and disposing of alcoholic beverages, and to promote temperance in the use and consumption of alcoholic beverages; and it is hereby declared that the subject matter of this act involves in the highest degree the economic, social and moral well-being and the safety of the State and of all its people; and all provisions of this act shall be liberally construed for the accomplishments of these purposes. This act is known and may be cited as the "Alcoholic Beverage Control Act." *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added all but the last sentence.

DEFINITIONS.

SEC. 2. The following words, terms and phrases when used in this act have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) **"Alcohol"** means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(b) **"Alcoholic beverage"** means and includes alcohol, spirits, liquor, wine, beer and every liquid or solid containing alcohol, spirits, wine or beer, and which contains one-half of one per cent or more

* In 1933 the Legislature enacted three laws relating to alcoholic beverages. See Stats. 1933, pp. 340, 625, and 1697. These acts were repealed by sections 68 and 69 of this act.

of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.

(c) **"Beer"** means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination thereof in water, and shall include ale, porter, brown, stout, larger beer, small beer and strong beer but shall not include sake known as Japanese rice wine.

(d) **"Distilled spirits"** means an alcoholic beverage obtained by the distillation of fermented agricultural products, and shall also include alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

(e) **"Wine"** means for the purposes of this act the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverages fortified with grape brandy, fruit brandy or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which does not contain more than 15 per cent added flavoring, coloring and blending material and which contains not more than 24 per cent of alcohol by volume and shall include Vermouth and sake, known as Japanese rice wine. Nothing herein contained shall be construed to affect or limit the power, authority or duty of the State Department of Public Health in the enforcement of the laws directed toward preventing the manufacture, sale or transportation of adulterated, misbranded or mislabeled alcoholic beverages, and the definition of "wine" herein contained shall be limited strictly to the purposes of this act and shall not extend to, or repeal by implication, any act preventing the manufacture, sale or transportation of adulterated, misbranded or mislabeled alcoholic beverages.

(f) **"Person"** includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate or any other group or combination acting as a unit, and the plural as well as the singular number.

(g) **"Board"** means the State Board of Equalization of the State of California.

(h) **"Club"** means a corporation or association which is the owner, lessee or occupant of an establishment operated solely for objects of a social or athletic nature, having a bona fide membership list, and the majority of the members of which pay dues at least once in every year, but not for pecuniary gain, and the property as well as the advantages of which belong to the members.

(i) **"Beer manufacturer"** means any person engaged in the manufacture of beer.

(i1) **"Brandy manufacturer"** means any person engaged in the manufacture of brandy only and not in the manufacture of any other distilled spirits.

(i2) **"Wine manufacturer"** means any person engaged in the manufacture of wine, except that any person who manufactures not to exceed two hundred gallons of wine per year for his own consump-

tion shall not, because of such manufacture, be considered a wine manufacturer within the meaning of this act.

(i3) **"Industrial alcohol dealer"** is a person who sells alcohol or distilled spirits in packages of more than one gallon for use in the trades, professions, or industries, but not for beverage use.

(i4) **"Retailer"** means and includes any on- or off-sale licensee.

(j) **"Rectifier"** means every person who colors, flavors, or otherwise processes distilled spirits by distillation, blending, percolating or other processes.

(k) **"Importer"** means any consignee of alcoholic beverages brought into this State from without this State when such alcoholic beverages are for delivery or use within this State, or any person bringing alcoholic beverages into this State from without this State which are not consigned to any person and which are for delivery or use within this State.

(k1) **"Exporter"** means any person who sells, delivers or consigns alcoholic beverages located within this State for delivery or use or sale without the State.

(k2) **"Private Warehouse"** means any place maintained by a licensee under this act, other than his licensed premises, for the storage but not for the sale of alcohol or alcoholic beverages owned by such licensee.

(k3) **"Public warehouse"** means any place licensed for the storage of, but not the sale of, alcohol or alcoholic beverages for the account of other licensees and shall include United States custom bonded warehouses and United States internal revenue bonded warehouses when such bonded warehouses are used for storage of alcoholic beverages for the account of another licensee.

(k4) **"Retail sale"** or **"sale at retail"** means the sale by an on- or off-sale licensee for consumption and not for resale.

(l) **"Sell"** or **"sale"** and the phrase **"to sell"** means and includes any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and means and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages and shall include soliciting or receiving an order for such beverages, but shall not include the return of alcoholic beverages by a licensee to the licensee from whom such alcoholic beverages were purchased.

(m) **"Public bar,"** or **"public saloon"** or **"public barroom"** is hereby expressly prohibited and means any room to which the public has access in which there is any bar, counter or other structure over which beverages of an alcoholic content in excess of four per cent by weight are sold or served by the drink to the public for consumption on the premises; provided, however, that counters or other structures used for the sale, service and consumption of meals, and not as a subterfuge for a public bar, shall not be deemed to be a public bar within the meaning of this act.

(n) **"Package"** means any container or receptacle used for holding alcoholic beverages which is corked or sealed with a stub, stopper or cap, or in any other manner.

(o) **"To bottle"** or **"to package"** means to bottle, barrel, or otherwise place alcoholic beverages in a container.

(p) **"Distilled spirits manufacturer"** means any person who produces distilled spirits from naturally fermented materials or in any other manner.

(q) **"Proof spirits"** means that alcoholic liquor which contains one-half of its volume of pure ethyl alcohol of a specific gravity of 0.7939 at sixty degrees Fahrenheit, referred to water at sixty degrees Fahrenheit as unity.

(r) **"Proof gallon"** means a gallon of proof spirits, or an equivalent amount of alcohol.

(s) **"Wholesaler"** means and includes every person other than a manufacturer or rectifier who is engaged in business as a jobber or wholesale merchant, dealing in alcoholic beverages.

(t) **"Wholesale sale"** or **"sale at wholesale"** means a sale to any licensee for purposes of resale.

(u) **"Retailer's on-sale license"** means and includes on-sale beer licenses, on-sale beer and [illegible]e licenses, and on-sale distilled spirits licenses.

(v) **"Gallon"** or **"wine gallon"** means that liquid measure containing two hundred thirty-one cubic inches.

(w) **"Within this State"** means all territory within the boundaries of this State.

(w1) **"Without the State"** means all territory without the boundaries of this State.

(x) **"Still"** means a still used in the production or capable of being used in the production of alcoholic beverages and does not include stills or apparatus used solely in the production of distilled water or substances other than alcoholic beverages.

(y) **"Broker"** means and includes every person other than a manufacturer, rectifier, or wholesaler who is engaged in dealing in warehouse certificates to alcoholic beverages.

(z) **"Case"** or **"original case"** means a standard box or carton as packed by the manufacturer in which packages of alcoholic beverages are shipped or transferred.

(z1) **"Licensee"** means any person holding a license issued by the board.

(z2) **"Salesman"** means any individual who solicits or receives an order for alcoholic beverages from any licensee. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added paragraphs (i), (l1), (l2), (l3), (l4), (k1), (k2), (k3), (k4), (w), (w1), (y), (z), (z1) and (z2) and changed definition of: 1. "Public bar" by adding "is hereby expressly prohibited." 2. Substituted "Distilled spirits manufacturer" for "Distiller" in paragraph (p). 3. Omitted "Broker" from definition of "Wholesaler" and amended "Distilled spirits," "Wine," "Importer," "Sale" and "Public bar" in such manner as to render it inexpedient to list details.

Wine definition.—Mixtures containing wine, alcohol, flavoring and water, with the added alcohol being three times as much as the wine are not wines within the meaning of section 2 of the Alcoholic Beverage Control Act. *(Tuo Ginger Ale Co., Ltd., vs. Davis et al* (1936), 12 Cal. App. (2d) 73.)

LICENSES REQUIRED OF ALCOHOLIC BEVERAGE DEALERS.

SEC. 3. No person shall exercise the privilege or perform any act or acts which a licensee under this act may exercise or perform under the authority of a license issued under this act unless such person is authorized to do so by a license duly issued pursuant to the provisions of this act. Any person violating any provision of this section shall be guilty of a misdemeanor, except that any person exercising the privileges or performing any act or acts which a still licensee may exercise or perform without having a still license duly issued under this act to said person is guilty of a felony. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted by Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted all provisions except that making violation a misdemeanor and added all other provisions.

WHEN SALE WITHOUT LICENSE AUTHORIZED.

SEC. 4. Any person in possession of a stock of lawfully acquired alcoholic beverages following the revocation or voluntary surrender of, or failure to renew his license may sell such stock, under supervision of the board in such manner as the board shall by rule or regulation provide, to a licensee or licensees authorized to sell such alcoholic beverages.

Any bank, trust company, or financial institution owning or possessing warehouse receipts for alcoholic beverages which warehouse receipts were acquired by such bank, trust company, or financial institution as security for a loan may after permission has been given by the board sell such warehouse receipts to a licensee authorized to sell such alcoholic beverages or such warehouse receipts. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted all provisions of former section and amended section to read as above.

TYPES OF LICENSES; FEES.

SEC. 5. The following are the types of licenses to be issued under this act and the annual fees to be charged therefor.

1. Beer manufacturer's license	$750.00 per year
2. Wine manufacturers license (to be computed only on the gallonage manufactured) five thousand gallons or less	20.00 per year
Over five thousand gallons to twenty thousand gallons per year	40.00 per year
Over twenty thousand to one hundred thousand gallons per year	75.00 per year
Over one hundred thousand to two hundred thousand gallons per year	100.00 per year
Over two hundred thousand gallons to one million gallons a year	150.00 per year
For each million gallons or fraction thereof over a million gallons an additional	100.00 per year
3. Distilled spirits manufacturer's license	250.00 per year

4. Still license	10.00 per y per still
5. Rectifier's license	250.00 per y
6. Brandy manufacturer's license	150.00 per y
7. Distilled spirits importer's license	no
8. Wine importer's license	no
9. Beer importer's license	no
10. Public warehouse license	10.00 per y
11. Wine bottling or packaging license	10.00 per y
12. Beer bottling or packaging license	500.00 per y
13. Distilled spirits wholesaler's license	250.00 per y
14. Beer and wine wholesaler's license	50.00 per y
15. Broker's license	250.00 per y
16. Retail package off-sale beer and wine license	10.00 per y
17. Retail package off-sale distilled spirits license for the first $10,000 retail sales per year	100.00 per y
For each $1,000 retail sales or fraction thereof over $10,000 per year	10.00 per y
18. Industrial alcohol dealer's license	50.00 per y
19. On-sale beer license	25.00 per y
20. On-sale beer and wine license	75.00 per y
21. On-sale beer and wine license for trains (per train)	15.00 per y
22. On-sale beer and wine license for boats (per boat)	50.00 per y
23. On-sale distilled spirits license	As set by the boa
24. Distilled spirits manufacturer's agents license	250.00 per y

In fixing license fees for on-sale distilled spirits licenses, the boa may place common carrier boats and trains in a separate classificati or separate classifications, and fix therefor different or lesser licen fees for boats or for trains than that fixed for other on-sale distil spirits licenses, giving consideration to the limited number of possi customers on boats or on trains and the limited number of hours with which it is practicable to exercise such license on a boat or on a tra

The fees specified above shall be reduced twenty-five per cent each full quarter of a year elapsing between the first day of the y for which the license is issued and the date on which the applicati for the license is filed with the board; provided, that where an app cation clearly indicates that the applicant does not desire to exerc the privileges granted by the license applied for until on or af the beginning of the quarterly period following the quarterly period which the application is filed with the board, such fees shall be reduc twenty-five per cent for each full quarter of a year elapsing betwe the first day of the year for which the license is issued and the d so indicated in the application, but in no event shall any license, oth than a temporary on-sale beer or wine license, be issued for any per for a fee less than one-half the annual license fee therefor.

The provisions of this paragraph shall not be deemed to restrict power of the board to make the refunds authorized by section 11a.

Where the fee for any license is graduated according to the amou of alcoholic beverages manufactured or sold under the license, a the license is applied for after the beginning of the year, the amou

of alcoholic beverage authorized to be manufactured or sold under the license shall be reduced proportionately with the reduction in fee provided in the preceding paragraph in accordance with such rules and regulations as the board may prescribe; provided that in the case of wine the license fee shall be determined solely upon the gallonage manufactured. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats 1937, ch. 758, added "(to be computed only on the gallonage manufactured)" to subdivision 2. Omitted "Fruit" from subdivision 6; divided distilled spirits and wine importer's license into two separate licenses and omitted fees for importers' licenses; and added provisions for a public warehouse license, a broker's license and a distilled spirits manufacturer's agent's license; added provision relating to fixing of fees for on-sale distilled spirits licenses for boats and trains; added provisions relating to issuance of licenses for any period less than a half year for a fee not less than one-half the annual license fee, the reference to section 11a, and the proviso at the end of the section; and omitted provisions for wine manufacturers' licenses for fees less than $20 per year and distilled spirits bottling or packaging license.

Importer's license fee constitutional.—The provision of the act (as it read prior to 1937) imposing a license fee of $500 for the privilege of importing beer within the State does not violate the Federal Constitution. (*State Board of Equalization* vs. *Young's Market Company* (1936), 299 U. S. 59.)

PRIVILEGES GRANTED BY LICENSES.

SEC. 6. Except as otherwise provided in this act and subject to the provisions of section 22 of Article XX of the Constitution, the licenses provided for in the preceding section shall authorize the person to whom issued to exercise the following rights and privileges and no others at the premises for which issued during the year for which issued.

(a) Any manufacturer's license authorizes the person to whom issued to become a manufacturer and importer of the alcoholic beverage specified in the license, and whether manufactured by him or any other person, to package, rectify, mix, flavor, color, label and export the same, and to sell only such alcoholic beverages as are packaged by or for him only to persons holding wholesaler's, manufacturer's or rectifier's licenses authorizing the sale of such alcoholic beverages and to persons who take delivery of such alcoholic beverages within this State for delivery or use without the State, except that beer manufacturers may also sell beer to any person holding a license authorizing the sale of beer, and wine manufacturers may also sell wine to any person holding a license authorizing the sale of wine; provided further, that a wine manufacturer's license authorizes the manufacture of grape brandy to be used exclusively for fortifying purposes by its holder on the premises for which issued; provided further, that as to distilled spirits produced in this State any manufacturer of such distilled spirits so produced in this State may sell such distilled spirits to any person holding a license authorizing the sale of distilled spirits.

The provisions of this subdivision shall not be deemed to prevent any licensed manufacturer of distilled spirits who on the effective date of this section shall be in possession of distilled spirits produced without the State, from selling such distilled spirits to licensees authorized to sell such distilled spirits, subject to the provisions of this act, during the license year ending June 30, 1938.

(b) A still license authorizes the person to whom issued to own or possess the number of stills indicated in the license upon the premises for which issued.

(c) A rectifier's license authorizes the person to whom issued to cut, blend, rectify, mix, flavor, and color distilled spirits; and wine upon which the excise tax imposed by section 23 has been paid, and, whether so cut, blended, mixed, flavored or colored by him or any other person, to package, label, export, and to sell such products to persons holding licenses issued by the board authorizing the sale of distilled spirits.

(d) Any importer's license authorizes the person to whom issued to become an importer of alcoholic beverages specified in the license and to export such alcoholic beverages, and to transfer such beverages to himself under another license.

An importer's license shall not be issued to any person except the holder of a manufacturer's, rectifier's, or wholesaler's license.

(e) A bottling or packaging license authorizes the labeling, bottling or packaging of the alcoholic beverages specified in the license.

(e1) Wine bottling or packaging license authorizes the labeling, bottling or packaging of the alcoholic beverages specified in the license in accordance with and subject to the rules and regulations now in effect or as may hereafter be adopted by the State Department of Public Health of the State of California.

(f) Any wholesaler's license authorizes the sale of the alcoholic beverage specified in the license only to persons holding licenses issued by the board authorizing the sale of such alcoholic beverage, the exportation of such alcoholic beverages, and the dealing in warehouse receipts to such alcoholic beverages.

A wholesaler's license shall not be issued to any on-sale licensee and no wholesale license shall be issued to any other person who does not in good faith actually carry on or intend to carry on a bona fide wholesale business, by sale to retail licensees, of the alcoholic beverage designated in such wholesale license, and the board may revoke any such wholesale license where such licensee fails for a period of forty-five days to actively and in good faith engage in such wholesale business. Sale by a wholesale licensee to himself as a retail licensee shall not be held to be the transaction of a bona fide wholesale business.

(g) A retail package off-sale beer and wine license authorizes the sale, to consumers only and not for resale, of beer in packages and in quantities of thirty-one gallons or less per sale, and the sale of wine in packages and in quantities of fifty-two gallons or less per sale, for consumption off the premises where sold.

(h) An off-sale distilled spirits license authorizes the sale, to consumers only and not for resale, of distilled spirits in packages of not more than one gallon and, after December 31, 1937, in packages containing not less than one-half pint for consumption off the premises where sold; except that nothing in this act shall be deemed to prevent the sale in packages of less than one-half pint, of bitters or other aromatic or flavoring or medicinal preparations, which are classed for taxing purposes as distilled spirits, by off-sale distilled spirits licensees.

(i) An industrial alcohol dealer's license authorizes the sale of undenatured ethyl alcohol in packages of more than one gallon for use in the trades, professions or industries and not for beverage consumption.

(j) Any on-sale license authorizes the sale of the alcoholic beverage specified in the license for consumption on the premises where sold. An on-sale distilled spirits license authorizes the purchase and possession of distilled spirits in packages of not more than one gallon capacity. An on-sale beer and an on-sale beer and wine license also authorizes the exercise, with respect to the particular beverage or beverages mentioned in such license, of the rights and privileges granted by an off-sale beer and wine license, provided, however, that none of the licensees mentioned in this sentence shall have the right by reason of any such license in this sentence mentioned, to label bottle or package or refill any package with any alcoholic beverage. On trains and boats, under such licenses, alcoholic beverages may be served only to passengers or employees.

(k) A broker's license authorizes the sale of warehouse certificates for alcoholic beverages only to persons holding licenses issued by the board authorizing the sale of such alcoholic beverage.

(*l*) A public warehouse license authorizes the storage of alcoholic beverages for the account of another licensee, including the storage of such beverages in a United States customs bonded warehouse, a United States internal revenue bonded warehouse and a United States bonded storeroom; provided, however, that as provided in section 7 hereof no license shall be required for the storage of beer upon which the excise tax levied by this act has been paid.

(m) Any manufacturer's, rectifier's or wholesaler's license shall also authorize the transfer of title to such alcoholic beverages to other licensed manufacturers, rectifiers and wholesalers when such alcoholic beverages are in storage in a licensed public warehouse, United States customs bonded warehouse or United States internal revenue bonded warehouse or United States bonded storerooms located at any place within the State without any additional or other license therefor.

(n) A distilled spirits manufacturers agent's license authorizes the importation of distilled spirits into this State, the possession of distilled spirits in public or private warehouses, the exportation of distilled spirits, the cutting, blending, mixing, flavoring and coloring of distilled spirits and whether so cut, blended, mixed, flavored or colored by him, or any other person, the packaging and the sale of such distilled spirits only to holders of distilled spirits manufacturer's, rectifier's or distilled spirits wholesaler's licenses.

(o) A licensed beer manufacturer or a licensed beer wholesaler may, in addition to selling beer at his licensed premises, sell to other licensees authorized to sell beer from wagons or trucks operated by such manufacturer or wholesaler, and provided that a beer manufacturer may sell and deliver beer from branch offices located away from his place of manufacture and exercise all his license privileges thereat and therefrom, other than manufacture, and the board shall upon request issue such beer manufacturer a duplicate of his original license which shall authorize the maintenance and operation of each

branch declared and designated by said manufacturer, upon the payment for each such duplicate of an amount equal to the license fee payable for a like period for a wholesale beer and wine license, and provided that in case any violation of any provision of this act or of any regulation of the board shall be committed in the exercise of the license privileges hereby authorized to be exercised at any such branch office, in the event such violation shall become a matter of investigation or hearing or decision by the board with relation to the license of the licensee, the board in making its ruling or decision, where such violation shall be found to be one committed in connection with the operation of said branch office and not a violation in connection with manufacturing or the manufacturing premises, shall not suspend or revoke or interfere with the manufacturer's license privileges or license at his place of manufacture but shall limit the application of its decision, permissible under this act, to and in connection with the particular duplicate license and the premises in the operation of which the violation occurred, and in the case of any violation of any provision of this act or of any regulation of the board committed in connection with the premises where the act of manufacturing beer is performed, the board in making its ruling or decision in connection with any such violation shall limit any such decision, permissible under this act, to and in connection with the license upon the premises of manufacture and to the particular function exercised by the licensee wherein a violation occurred, such as manufacturing, importing, exporting, packaging, labeling, selling to wholesalers or selling to retailers, and any existing duplicate license for any branch office, unless such branch office actually participated in the commission of the violation, shall not be affected or interfered with by such decision or by reason of such violation.

(p) A licensed wine manufacturer may in addition to selling wine at his licensed premises sell and deliver wine to other licensees from branch offices or warehouses or United States bonded storerooms, located away from his place of manufacture and exercise all his license privileges thereat and therefrom other than manufacture, and the board shall upon request issue such wine manufacturer a duplicate of his original license which shall authorize the maintenance and operation of each branch or warehouse or United States bonded storeroom declared and designated by said manufacturer upon the payment for each such duplicate of an amount equal to the license fee payable for a like period for a wholesale beer and wine license.

(q) Any distilled spirits manufacturer's or brandy manufacturer's license and any rectifier's license authorizes the sale, in conformity with United States internal revenue laws and regulations, of such distilled spirits, the sale of which is authorized by the license, in packages larger than one gallon for use in the trades, professions or industries and not for beverage use.

(r) Any beer manufacturer, wine manufacturer, rectifier or any wholesaler licensed under this act may in addition to the other privileges exercised under such license and in accordance with rules and regulations prescribed by the board, sell tax paid alcoholic beverages mentioned in the license of such licensee to nonlicensees having a fixed place of business or residence upon territory within this State which

s maintained by the United States Government as a military or naval eservation or national park. *(Statutes 1937, ch. 758; operative uly 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added pararaph (e1) and paragraphs (k) to (r); changed paragraphs (a), (c), (d), (f), h), (i) and (j) in such manner as to render it inexpedient to list details.

Federal Military Reservations.—Paragraph (f) of section 6 does not authorize holder of a wholesaler's license to make sales of alcoholic beverages to nonlicensees; his is true even though the nonlicensee is located on a military reservation over hich the Federal government has exclusive jurisdiction. (*McKesson and Robbins, nc.*, vs. *Collins et al* (1937), 88 C. A. D. 293.)

GIVING OF SAMPLES.

SEC. 6.5. Any manufacturer's, rectifier's, importer's or wholealer's license also authorizes the giving away of samples of the kind f alcoholic beverage the sale of which is authorized by any such icense; provided that no holder of any such license shall give away ny such samples of alcoholic beverages except under such regulations s shall be prescribed by the board. A retail license does not authorize he furnishing or giving away of any free samples of alcoholic eyerages. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

RESTRICTIONS ON PURCHASES BY RETAIL LICENSEES.

SEC. 6.6. No retail on- or off-sale licensee shall purchase alcoholic eyerages for resale from any person except a person holding a beer or wine manufacturer's, a rectifier's or a wholesaler's license issued nder this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

SALE OR POSSESSION OF UNDENATURED ALCOHOL BY RETAIL LICENSEES; PRESCRIPTIONS.

SEC. 6.7. No retail licensee, except a pharmacy or drug store egistered with the California State Board of Pharmacy, shall sell or possess on his licensed premises any undenatured alcohol of any proof r compound thereof which is an alcoholic beverage as defined in ection 2 of this act containing more than sixty per cent of alcohol by olume. Undenatured alcohol shall be sold at retail only upon the prescription or order of the holder of a physicians and surgeons or dentists or veterinarians license. Any person who violates any of the provisions of this section is guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

UNLAWFUL FOR SALESMEN TO VIOLATE ACT.

SEC. 6.8. It shall be unlawful for any salesman to aid or abet in the violation of any of the provisions of this act or knowingly to become a party either directly or indirectly in the violation of any of

the provisions of this act. *(Statutes 1937, ch. 758; operative July 1 1937.)*

History.—Added by Stats. 1937, ch. 758.

SALES BY DISTILLED SPIRITS MANUFACTURERS TO RETAILERS SUBJECT TO SAME PROVISIONS APPLYING TO SALES BY WHOLESALERS AND RECTIFIERS.

SEC. 6.9. All the provisions of this act relating to the sale and deliv ery of distilled spirits from distilled spirits wholesalers or rectifiers t on- or off-sale licensees and all provisions of this act relating to distille spirits excise tax procedure shall apply to distilled spirits manufac turers when making sales of distilled spirits produced in this Stat to on- or off-sale licensees in those cases where distilled spirits manu facturers are authorized to make sales to such licensees. *(Statute 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

SEPARATE LICENSE FOR EACH PREMISE; STORAGE IN WAREHOUSES; DUPLICATE LICENSES IN PREMISES WITH MORE THAN ONE SERVICE BAR; TRANSFER OF LICENSES.

SEC. 7. Each license issued under this act shall be issued to specific person, and, except in the case of licenses authorizing the sal of alcoholic beverages on trains or boats, shall be issued for a specifi location, the principal address of which shall be indicated on th license. Separate licenses shall be issued for each of the premises o any business establishment having more than one location except a provided for in section 6, subdivisions (o) and (p), and except tha the holder of a public warehouse license maintaining or operatin more than one public warehouse in this State shall be required t obtain but one license for all of his public warehouse establishments A copy of the original public warehouse license issued to a publi warehouseman maintaining or operating more than one public ware house in this State shall be posted in each of his public ware house establishments. A charge of one dollar shall be made by th board for each copy of a public warehouse license issued to suc public warehouseman.

Beer and wine upon which excise taxes have been paid to the Stat at the rate fixed under this act, may be stored by or for any license under this act in any private or public warehouse or elsewhere i this State without the necessity of any license by the party furnishin or providing the storage space, or any special additional license bein required by such licensee; provided, however, that any other alcoholi beverage may without the necessity of any additional license be store by or for a licensee in private warehouses approved by the board i within the limits of the county in which such licensees licensed prem ises are located, or in a public warehouse within such county, or ma be stored in bond in a public warehouse outside such county wher such warehouse is also a United States customs bonded warehouse, or

United States internal revenue bonded warehouse or United States bonded storeroom.

Any on-sale distilled spirits licensee who maintains upon or within the premises for which such license is issued more than one room in which there is regularly maintained a fixed counter or service bar at which distilled spirits are served for consumption within the licensed premises shall obtain from the board, and the board shall upon request issue a duplicate of his original license for each room, in excess of one, containing such fixed counter or service bar and shall post a duplicate of his original license in each such room. He shall pay to the board at the time of application for each such duplicate license an amount equal to the license fee payable for a like period for the original on-sale distilled spirits license. Failure to obtain such duplicate license or licenses and to pay such fees and renewal fees therefor shall subject such licensee to the penalties imposed by this act for failure to obtain an original license or to pay the renewal fees therefor.

Licenses for trains and boats shall be based on the average number in actual operation, during the license year, of each class of operating units, viz, trains and boats upon which the license provileges are exercised, such average number to be determined as the board may prescribe.

Each license issued under this act is separate and distinct, shall be transferable from one person to another upon approval by the board and the payment of a transfer fee of ten dollars, and upon such conditions as the board shall prescribe, and shall be transferable from the premises for which issued upon compliance with the provisions of this act relating to the issuance of an original license and only as may be permitted by the board, upon payment of a transfer fee of ten dollars for each license.

Whenever a license certificate issued under the act is in effect and is lost or destroyed, the board shall issue a duplicate license upon the payment of a fee of five dollars. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added present second and third paragraphs and provisions for one license for a public warehouseman operating more than one warehouse in this State; and provided licenses shall be transferable from one person to another upon approval by the board and payment of the tranufer fee of $10; and changed premises transfer fee from $5 to $10.

PERIOD FOR WHICH LICENSES ISSUED; TEMPORARY LICENSES; RENEWAL; FAILURE TO PAY RENEWAL FEE.

SEC. 8. All retailer's on-sale licenses, except on-sale distilled spirits licenses for seasonal businesses, shall be issued on a calendar year basis, except that the board may issue special licenses for the sale of beer or wine on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, or similar occasion at a fee of $5 per day. All other licenses issued under this act shall be issued on the basis of a fiscal year commencing July first and ending June thirtieth.

Every license issued under this act, effective on or after January 1, 1938, other than a temporary license, shall be renewable unless such license has been revoked, provided that renewal application is made and that the fee therefor is paid on or before the date on which payment thereof is due. If the fee for any license is not so paid, such license is automatically suspended, but may be reinstated by the board within thirty days thereafter upon payment of the amount due and, in addition thereto, of such penalty as the board may by regulation prescribe, not to exceed twenty-five per cent of the annual fee for such license. Unless such license is so reinstated, it is automatically revoked thirty days after the date upon which payment therefor is due, and no license shall be issued to the licensee thereunder except upon a new application. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added provision relating to temporary beer or wine licenses and the second paragraph; omitted second, third and fourth paragraphs of former section providing for license expiration dates and penalties for failure to file renewal applications.

SIGNING AND POSTING OF LICENSES.

SEC. 9. Upon receipt of any license issued hereunder the licensee shall sign said license and shall post the license in a conspicuous place upon the licensed premises. Licenses issued for trains or boats may, in lieu of being posted upon the train or boat for which issued, be posted in such other place in this State as the board shall designate. *(Original section; Statutes 1935, p. 1123.)*

APPLICATION FOR LICENSES.

SEC. 10. To obtain a license under this act application therefor, verified under oath, accompanied by the licensee fee therefor, must be made to the board upon a form prescribed by the board. The application must contain the name of the applicant, and in the case of a copartnership, the names of the individual partners, in the case of a corporation the principal officers and directors, the location of the premises for which a license is applied and such other information as the board may require to assist it in determining whether the applicant and the premises qualify for a license and in addition each application shall contain a statement to the effect that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this act or any regulation of the board applicable to applicant or pertaining to the manufacture, sale or distribution of alcoholic beverages, particularly any of the provisions of section 54 or 55 of said act, and in the event such applicant can not make such statement then such application shall contain a statement of the violation, if any, or reasons which will prevent the applicant from being able to comply with such requirements with respect to such statement. The application shall be signed by the applicant. In the case of a partnership the application shall be signed by each of the partners, and in the case of a

corporation by an officer and under the seal of the corporation. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added provision for verification of license applications; substituted "partners" for "parties" in second sentence; omitted provision for endorsement of license applications by five freeholders; and added requirements that application contain statements as to conviction of felony, violation of the act and of sections 54 and 55 of the act, and for signing of applications by applicants.

INVESTIGATION OF APPLICANT; REFUND OF FEE.

SEC. 11. Upon receipt of an application for a license and the license fee the board shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license. The board must deny an application for a license if either the applicant or the premises for which a license is applied do not qualify for a license under this act.

If an application is denied, three-fourths of the license fee paid, or an amount equal to the license fee paid less ten dollars, whichever is greater, shall be credited on any taxes then due from the applicant under this act, the Retail Sales Tax Act of 1933, as amended, or the Use Tax Act of 1935, as amended, the remaining portion of such amount shall be returned to the applicant and the balance of the license fee shall be deposited in the alcoholic beverage control fund hereinafter created. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added the provision for the crediting of license fee refunds on any taxes due under the act, the Retail Sales Tax Act or the Use Tax Act.

REFUND OF PORTION OF FEE WHERE LICENSE ISSUED IN QUARTER SUBSEQUENT TO QUARTER IN WHICH APPLICATION MADE.

SEC. 11a. If after an application for a license is filed, the license is not issued within the quarter applied for but is issued thereafter, such portion of the license fee as is not required in the quarter when issued shall be credited on any taxes then due from the applicant under this act, the Retail Sales Tax Act of 1933, as amended, or the Use Tax Act of 1935, as amended, and the balance shall be refunded to the applicant. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

CITIZENSHIP QUALIFICATIONS.

SEC. 12. No on-sale distilled spirits license shall be issued to any applicant who is not a citizen of the United States; and where a corporation, partnership or other business association is the applicant no such license shall be issued to it unless the majority of the members of the board of directors and all of its officers who are charged with the duty of managing, directing or conducting said business, are citizens of the United States. *(Original section; Statutes 1935, p. 1123.)*

PREMISES NEAR CHURCHES, SCHOOLS, ETC.

SEC. 13. The board is specifically authorized to refuse the issuanc of on-sale retail licenses for premises located within the immediat vicinity of churches, hospitals, schools and children's public play grounds. *(Original section; Statutes 1935, p. 1123.)*

RESTRICTIONS ON ISSUANCE OF LICENSES FOLLOWING REVOCATION.

SEC. 14. No retail license shall be issued to any applicant fo any premises for which a license has been revoked, during the thre months immediately preceding the filing of such application; provided however, that this section shall not apply where a revocation is th result only of the nonpayment of a license fee. *(Statutes 1937, ch. 758 operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added the las clause.

DISTILLED SPIRITS MANUFACTURERS, WHOLESALERS OR RECTIFIERS MAY HAVE NO MORE THAN ONE LICENSE IN ANY CITY.

SEC. 14.5. Not more than one distilled spirits manufacturer' license, nor more than one rectifier's license, nor more than one distille spirits wholesaler's license shall be issued to any one person in any on city or city and county in the State. *(Statutes 1937, ch. 758; opera tive July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

ZONING ORDINANCES.

SEC. 15. No retail license shall be issued for any premises whic are located in any territory where the exercise of the rights and privi leges conferred by the license is contrary to a valid zoning ordinanc of any county, city and county or municipality unless such premise had been used in the exercise of such rights and privileges at a tim prior to the effective date of any such valid zoning ordinance.

Nothing in this act contained shall be deemed to interfere with th powers of cities, counties, and cities and counties, conferred upon them by Chapter 734, Statutes of 1917, the same being an act of the Legis lature entitled, "An act to provide for the establishment within munici palities of districts or zones within which the use of property, heigh of improvements and requisite open spaces for light and ventilation o such buildings, may be regulated by ordinance." *(Original section Statutes 1935, p. 1123.)*

RESTRICTIONS ON ISSUANCE OF ON-SALE LICENSES.

SEC. 16. No retailer's on-sale license shall be issued to any perso to whom or for any premises for which a manufacturer's, importer's wholesaler's or rectifier's license shall have been issued, and no manu

facturer's, importer's, wholesaler's or rectifier's license shall be issued to any person to whom or for any premises for which a retailer's on-sale license is issued. *(Original section; Statutes 1935, p. 1123.)*

RESTRICTIONS ON ISSUANCE OF OFF-SALE LICENSE TO DISTILLED SPIRITS WHOLESALER OR RECTIFIER.

SEC. 16½. A retail package off-sale distilled spirits license when issued to the holder of a rectifier's or distilled spirits wholesaler's license shall be issued only for the same premises for which such rectifier's or distilled spirits wholesaler's license is issued, except as otherwise provided or permitted in this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

PUBLIC WORKS CAMPS.

SEC. 17. No license, other than an on-sale beer license, shall be issued to any applicant for any premises situated more than one mile outside the limits of an incorporated city or town and within four miles of any camp or establishment of men numbering twenty-five or more, engaged upon or in connection with the construction, repair or operation of any work, improvement or utility of a public or quasi public character; provided, however, that nothing in this section shall be deemed to apply to the renewal of any licenses for any premises which have been established and licensed under this act at least six months prior to the establishment of such camp or establishment of men. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added "other than an on-sale beer license," in first line.

RESTRICTIONS ON ISSUANCE OF ON-SALE BEER AND WINE AND DISTILLED SPIRITS LICENSES.

SEC. 18. Retailer's "on-sale beer and wine licenses" or "on-sale distilled spirits licenses" shall be issued only to bona fide hotels, restaurants, cafes, cafeterias, railroad dining or club cars, passenger ships or other public eating places, or bona fide clubs after such clubs have been lawfully operated for not less than one year. *(Original section; Statutes 1935, p. 1123.)*

BRANDY MANUFACTURER'S LICENSE.

SEC. 19. Brandy manufacturer's licenses shall be issued only to persons holding a wine manufacturer's license. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted the word "Fruit" which appeared before the word "brandy."

INDUSTRIAL ALCOHOL DEALER'S LICENSE.

SEC. 20. Industrial alcohol dealers' licenses shall be issued only to persons to whom, and for premises, for which, either a distilled spirits

manufacturer's, importer's or wholesaler's license has been iss
(Original section; Statutes 1935, p. 1123.)

**RESTRICTIONS ON ISSUANCE OF DISTILLED SPIRITS MA
FACTURER'S AND MANUFACTURER'S AGENT'S LICENS**

SEC. 20½. No distilled spirits license of any kind shall be is
under this act except a distilled spirits manufacturer's or a dist
spirits manufacturer's agent's license to any person or to any of
director, employee or agent of any person who manufacturers dist
spirits within or without this State. No distilled spirits m
facturer's or distilled spirits manufacturer's agent's license shal
held by any person or persons, who holds any ownership or inte
directly or indirectly, by stock ownership, interlocking direc
trusteeship, loan, mortgage or lien on any personal or real propert
otherwise, in any distilled spirits wholesaler's, rectifier's or retai
license; provided, however, that the provisions of this section shall
be deemed to prevent agents or employees of such distilled sp
manufacturer, located without this State, from soliciting orders
distilled spirits within the State; provided further, that the provis
of this section shall not be deemed to prevent the issuance of a dist
spirits wholesale license to any person who, at the time of the effe
date of this act, owns or operates a business which for the five y
immediately preceding said effective date has maintained and oper
in this State a bona fide jobbing and distributing establishment for
sale to retail dealers of goods, wares and merchandise, the major
tion of which business at a time five years preceding the effective
of this act was goods, wares and merchandise other than alcol
beverages. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

**POSTING AND PUBLICATION OF NOTICE OF APPLICATI
NOTICE TO LOCAL AUTHORITIES; HEARING ON
PROTEST OF LOCAL AUTHORITIES.**

SEC. 21. Before commencing to engage in the sale of any alcol
beverage at any premises, notice of intention to so commence, mus
posted in a conspicuous place at the entrances to such prem
Licenses will not be issued for such premises until such notice has
so posted for fifteen consecutive days immediately prior to the issu
of the licenses. The notice herein specified shall be in such form as
board shall prescribe.

Upon the receipt by the board of an original application for
license, written notice thereof shall immediately be mailed by
board to the sheriff, chief of police and district attorney of
locality, to the board of supervisors of the county in which the prem
are situated, if in unincorporated territory, and to the city counci
other governing body of the city or city and county in which
premises are situated, if situated within an incorporated area.

No license shall be issued by the board until at least fifteen
after the mailing by the board of the notices required by this sect

Upon receipt by the board within such fifteen days of a protest by the governing body of the city, city and county, or county to whom such notice has been mailed against the issuance of a license, the board shall not issue such license until after a public hearing is held by the board, or a representative designated by the board, within the county, city and county, or city affected. Notice of the time and place of such hearing shall be given by the board to the governing body and the applicant for the license in such manner as the board shall by regulation prescribe.

All applicants for on-sale licenses shall, within five (5) days after filing their application with the board, cause a notice of such application giving the name or names of the applicant and the premises where the business is to be conducted, to be published once in a newspaper of general circulation in the city in which such premises are situated, or if such premises are not in a city then such publication shall be made in a newspaper of general circulation nearest the premises where the business is to be conducted. The form of such notice shall be prescribed by the board. Affidavit of publication shall be filed with the board prior to the issuance of any license. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added "written" before "notice" in the second paragraph and provisions relating to notice being given to boards of supervisors and city councils or other governing bodies of cities or counties; and added third, fourth and fifth paragraphs.

PAYMENT OF OFF-SALE DISTILLED SPIRITS LICENSE FEES; REPORT OF SALES.

SEC. 22. Any applicant for an off-sale retail package distilled spirits license, shall, at the time of filing application for license, accompany such application with the minimum license fee required or such larger fee as the applicant shall elect. Off-sale retail package distilled spirits licensees shall report quarterly at such time and in such manner as the board may prescribe the amount of distilled spirits sold during the preceding quarter. If any such report shows that the total amount of distilled spirits sold during the year exceeds the amount permitted annually by the license fee already paid the board, the licensee shall accompany such report with such additional license fee as may be unpaid in accordance with the schedule provided in section 5. If any such licensee shall for any reason quit business, he shall within fifteen days after the date of quitting business make a final report and payment of any additional license fee disclosed by his report or by an investigation by the board to be unpaid. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. This section formerly provided for the method of payment of varying license fees for both wine manufacturers and off-sale distilled spirits licenses. Stats. 1937, ch. 758, amended section 22 to provide for the method of payment of license fees by off-sale distilled spirits licensees only. Section 22a was added to provide for the payment of license fees by wine manufacturers. Sections 22b and 22c were formerly contained in this section.

PAYMENT OF WINE MANUFACTURER'S LICENSE FEES; REPORT OF MANUFACTURE.

SEC. 22a. Any applicant for a wine manufacturer's license sha at the time of filing application for license, accompany such applic tion with a license fee based upon a reasonable estimate of the amou of wine gallonage to be manufactured by such applicant. Perso holding wine manufacturers' licenses shall report annually at the e of each fiscal year, at such time and in such manner as the board m prescribe, the amount of wine manufactured by them during the fis year.

If the total amount of wine manufactured during the year excee the amount permitted annually by the license fee already paid t board, the licensee shall pay such additional license fee as may unpaid in accordance with the schedule provided in section *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 22.

ARBITRARY ASSESSMENT OF FEES FOR FAILURE TO FILE REPORTS.

SEC. 22b. Failure to report the amount of alcoholic beverag manufactured or sold as herein required and to pay such addition license fees when due within ten days of the date set by the boar shall be considered a violation of this act, and shall also subject t licensee to an arbitrary assessment of such license due by the boar *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 22.

RESTRICTIONS ON ISSUANCE OF LICENSES WHERE REPORTS AND PAYMENTS OF LICENSE FEES HAVE NOT BEEN MADE.

SEC. 22c. Failure to make a final report and payment of a license due at the end of any tax year shall operate to prevent t board from issuing any license to any delinquent licensee. *(Statut 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 22.

DATE WHEN FILING OF REPORTS AND PAYMENTS OF TAXES AND FEES DEEMED TO BE MADE.

SEC. 22d. Where tax reports or payment of excise taxes or licen fees are required to be made on or by specified dates, they shall deemed to have been made at the time they are filed with or paid to t board or other proper official or, if sent by mail, on the date shov by the United States postmark on the envelope containing such repo or payment. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

EXCISE TAX ON BEER AND WINE.

SEC. 23. An excise tax is hereby imposed upon all beer and wine sold in this State by a manufacturer or importer, except as otherwise in this act provided, at the following rates:

(a) On all beer, sixty-two cents for every barrel containing thirty-one gallons, and at a proportionate rate for any other quantity; (b) On all natural dry wines one cent per wine gallon and at a proportionate rate for any other quantity; (c) on all other still wines two cents per wine gallon and at a proportionate rate for any other quantity; (d) on champagne, sparkling wine, except sparkling hard cider, whether naturally or artificially carbonated one and one-half cents per half pint or fraction thereof, three cents per pint or fraction thereof greater than one-half pint, six cents per quart or fraction thereof greater than one pint; (e) on sparkling hard cider two cents per wine gallon and at a proportionate rate for any other quantity. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, substituted "except as otherwise in this act provided" in place of "on or after July 1, 1935"; added provision for one cent per gallon tax on natural dry wines which were formerly taxed at two cents rate; added subdivisions (d) and (e); subdivision (c) formerly read "On champagne, or sparkling wine, whether naturally or artificially carbonated, three cents per pint or fraction thereof."

TAX EMEMPTION FOR BEER AND WINE CONSUMED BY EMPLOYEES OF MANUFACTURERS AND IMPORTERS.

SEC. 23a. Beer and wine consumed by employees of manufacturers or importers upon the premises of such manufacturers and importers shall be exempt from the excise tax mentioned in section 23 hereof under such rules and regulations as the board may prescribe. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

PRESUMPTION THAT BEER AND WINE HAS BEEN SOLD BY MANUFACTURER OR IMPORTER; EXCEPTIONS; EXEMPTIONS.

SEC. 23b. It shall be presumed, for the purposes of this act, that all beer and wine manufactured in this State by a manufacturer, or delivered to a manufacturer or importer here, has been sold in this State by such manufacturer or importer unless proven to the satisfaction of the board, in verified reports on forms prescribed by the board, that such alcoholic beverages (1) are still in the possession of such licensee or (2) have been sold and delivered to another manufacturer of such alcoholic beverages, or (3) have been exported without this State or sold for export by the licensee making the report, or (4) prior to the termination of possession such alcoholic beverages have been lost through unintentional destruction, or (5) were spoiled beer or wine which was destroyed in the presence of a representative of the board or of the United States Bureau of Internal Revenue, or (6) prior to

the termination of possession have been unaccountably lost, but such unaccounted for loss shall not exceed a tolerance to be fixed by the board; or (7) are beer or wine otherwise exempted from taxation under this act.

No excise tax mentioned in section 23 hereof shall be or is imposed by this act upon any wine or beer exported by a licensed manufacturer or importer from within this State to any place without the State or sold by a licensed manufacturer or importer for export from within this State to any place without the State, and actually exported from this State within thirty days from the date of such sale or upon any wine or beer specifically mentioned in any subdivision (1) to (7) of this section, and no excise tax mentioned in section 23 hereof shall be or is imposed by this act upon any transaction whereby any wine or beer is sold by a licensed manufacturer to another licensed manufacturer.

Any claim for exemption from excise taxes under this section must be made to the board, in such manner as the board shall prescribe. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

EXCISE TAX ON DISTILLED SPIRITS.

SEC. 24. An excise tax is hereby imposed upon all distilled spirits sold in this State by rectifiers or wholesalers thereof, at the following rates:

On all distilled spirits of proof strength or less, two cents on each bottle containing two ounces or fraction thereof; five cents on each bottle containing eight ounces or fraction thereof greater than two ounces; ten cents on each bottle containing one pint or fraction thereof greater than a half-pint; sixteen cents on each bottle containing one-fifth gallon or fraction thereof greater than one pint; twenty cents on each bottle containing one quart or fraction thereof greater than one-fifth gallon; forty cents on each bottle containing one-half gallon or fraction thereof, greater than one quart; eighty cents on each bottle containing one gallon or fraction thereof greater than one-half gallon and at a proportionate rate for any quantity.

All distilled spirits in excess of proof strength shall be taxed at double the above rate. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, substituted "by rectifiers or wholesalers thereof" for "on and after July 1, 1935" and added "and at a proportionate rate for any quantity" at the end of the second paragraph.

Federal Military Reservations.—The sale of distilled spirits to a person on a military reservation over which the Federal Government has exclusive jurisdiction is subject to the tax imposed by the Alcoholic Beverage Control Act. (*McKesson and Robbins, Inc., vs. Collins et al* (1937), 88 C. A. D. 203.)

PRESUMPTION THAT DISTILLED SPIRITS HAVE BEEN SOLD BY WHOLESALERS OR RECTIFIERS; EXCEPTIONS.

SEC. 24.2. It shall be presumed that all distilled spirits acquired by any rectifier or distilled spirits wholesaler have been sold in this State by such rectifier or wholesaler unless proven to the satisfaction of

the board, in verified reports on forms prescribed by the board, that such distilled spirits are (1) still in the possession of such licensee, or (2) that such distilled spirits have been sold or delivered to another licensed distilled spirits manufacturer, rectifier, importer or wholesaler, or (3) that such distilled spirits have been exported without this State or sold for export by the licensee making the report and actually exported from this State within thirty days from the date of such sale, or (4) that prior to the termination of possession such distilled spirits have been lost through unintentional destruction, or (5) that prior to the termination of possession there has been an unaccounted for loss, but such unaccounted for loss shall not exceed a tolerance to be fixed by the board, or (6) that such distilled spirits have been consumed as samples on the licensed premises; or (7) that such distilled spirits are otherwise exempt from taxation under this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

"SALE" INCLUDES TRANSFER FOR SALE UNDER A RETAILER'S LICENSE.

SEC. 24.3. The word "sale" as used in sections 23 and 24 shall include, in addition to the definition in section 2 of this act, the transaction whereby alcoholic beverages are transferred, with or without consideration, by a licensee holding one type of license to himself for purposes of sale under a retailer's license held by himself. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

RETAIL DISTILLED SPIRITS LICENSEES REQUIRED TO KEEP RECORDS OF PURCHASES.

SEC. 24.4. On- or off-sale distilled spirits licensees shall keep books of accounts in which shall be kept records of all distilled spirits acquired by such licensees, or in lieu thereof shall preserve all original bills and invoices for distilled spirits acquired. Such records shall be in the form prescribed by the board and shall show at all times all purchases of distilled spirits made during the previous two years. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

UNLAWFUL TO POSSESS DISTILLED SPIRITS IN PACKAGES NOT BEARING EXCISE STAMPS; EXCEPTION AS TO CERTAIN LICENSEES.

SEC. 24.5. Any person, except a distilled spirits manufacturer, distilled spirits manufacturer's agent, brandy manufacturer, rectifier, importer or wholesaler, who shall be found in possession of distilled spirits, the packages of which do not bear stamps, as provided elsewhere in this act, evidencing payment of the excise tax thereon, shall be guilty of a misdemeanor and shall be subject to the payment of the excise tax due on the distilled spirits so found, together with a penalty

equal to the amount of excise tax due. Such distilled spirits shall seized by the board.

The provisions of this section shall have no application to a distilled spirits stored for the account of any licensee, other than retail licensee, at the licensed public warehouse of the holder of a publ warehouse license. *(Statutes 1937, ch. 758; operative July 1, 1937*

History.—Added by Stats. 1937, ch. 758.

BOND OF DISTILLED SPIRITS MANUFACTURERS, WHOL SALERS, IMPORTERS AND RECTIFIERS.

SEC. 24.7. Each person licensed as a manufacturer, rectifier wholesaler of distilled spirits shall file with the board a bond in t penal sum of five thousand dollars, and each person licensed as imported of distilled spirits shall file with the board an addition bond in the penal sum of five thousand dollars, duly executed by suc person as principal and a corporation, such as is mentioned in sectio 1056 of the Code of Civil Procedure, as surety, payable to the peop of the State of California, conditioned upon the payment of all exci taxes and penalties assessed against or imposed upon such license arising out of this act. Any person licensed as an importer of di tilled spirits, and who has filed with the board a bond as provided b this section, shall not be required to file an additional bond by reaso of the fact that said person is also licensed as an importer of wine an beer notwithstanding the provisions of section 25 of this act.

Each rectifier or wholesaler of distilled spirits who is the holde of more than one rectifier's or distilled spirits wholesaler's licens shall file with the board a bond or bonds in the additional penal sum o one thousand dollars for each of the additional rectifier's or distille spirits wholesaler's licenses held by such rectifier or wholesaler. Th bond shall be in such form as the board shall prescribe. *(Statute 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

BOND OF BEER AND WINE MANUFACTURERS AND IMPORTERS.

SEC. 25. Every person who engages in business as, or becomes manufacturer or importer of beer or wine, as defined in this act, shal be required by the board to file with said board a bond duly executed by such person as principal and a corporation such as is mentioned in section 1056 of the Code of Civil Procedure in this State, as surety payable to the people of the State of California, conditioned upon the payment of all excise taxes and penalties assessed against or imposed upon such person, arising out of this act.

The bond shall contain the provisions and be in the form substantially as follows:

"Know all men by these presents:

That we, _____, as principal, and _____ a corporation, duly organized and doing business under and by virtue of the laws of_____,

and duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as surety, are held and firmly bound unto the people of the State of California in the sum of _____ dollars ($_____), lawful money of the United States of America, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

Whereas, the above bounden principal has made application to the State Board of Equalization of the State of California for a license authorizing said principal to engage in business as a manufacturer or importer of beer or wine within the meaning of the Alcoholic Beverage Control Act and amendments thereto, and

Whereas, under the terms of said act a bond is required of said principal and good and sufficient surety, payable to the people of the State of California, conditioned upon the payment to the State of California of all of the excise taxes and penalties assessed against or imposed upon said principal arising out of said act.

Now therefore, if the above bounden principal shall pay all excise taxes and penalties assessed against or imposed upon said principal arising out of said act, or if the board, within thirty days after any default by said principal in the payment of any such tax or penalty shall fail to notify the surety thereof, personally or by mail, then this obligation shall be null and void: otherwise to remain in full force and effect.

That said bond shall remain in force and effect until the surety or sureties are released from liability by said board or until said bond is canceled by said surety or sureties as hereinafter provided.

The surety herein reserves the right to withdraw as such surety, except as to any liability already incurred or accrued hereunder, and may do so upon giving written notice of such withdrawal to the State Board of Equalization; provided, however, that no withdrawal shall be effective for any purpose until thirty days shall have elapsed from and after receipt of such notice by said board; and further provided, that no withdrawal shall in anywise affect the liability of said surety arising out of any sale of beverage made by the principal herein prior to the expiration of such period of thirty days, regardless of whether or not the excise tax based upon such sale shall have been due prior to the expiration of such period.

Signed and sealed this _____ day of _____, 193__.

_____
Principal.

By_____

_____
Surety.

By_____"

The total amount of the bond or bonds required of any such manufacturer or importer shall be fixed by the board and may be increased

or reduced by said board at any time subject to the limitations herein provided. In fixing the total amount of the bond or bonds required of any such manufacturer or importer, the board must require a bond or bonds equivalent in total amount to one and one-half times his estimated monthly excise tax determined in such manner as said board may deem proper; provided, that the total amount of the bond or bonds required of any such manufacturer or importer shall never be less than five hundred dollars. *(Original section; Statutes 1935, p. 1123.)*

REPORTS OF BEER AND WINE MANUFACTURERS AND IMPORTERS.

SEC. 26. Every manufacturer or importer of beer or wine taxable under this act shall render to the board, on or before the twentieth day of each succeeding month, a verified statement of the quantity of such beer or wine sold by such manufacturer or importer during the preceding calendar month. Such statement shall be in such form as the board may prescribe, together with such other information the board may require; provided, that in the case of wine such statement shall be filed in accordance with the provisions of section 23b of this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, substituted "beer or wine" in place of "alcoholic beverages" and "twentieth day of each succeeding month" for "tenth day of August, 1935, and on or before the tenth day of each month thereafter"; and added the proviso clause at the end of the section. The section formerly contained three other paragraphs which are the present sections 26a, 26b and 26c with amendments thereto.

ASSESSMENT OF EXCISE TAX WHEN REPORT NOT MADE; PENALTY.

SEC. 26a. If any manufacturer or importer of beer or wine shall fail, neglect or refuse to file said report, within the time prescribed for filing such report, the board may note such failure, neglect or refusal upon the tax roll hereinafter described, and may estimate the amount of alcoholic beverage sold by said manufacturer or importer, assessing the excise tax thereon, adding to said excise tax a penalty of fifteen per cent thereof for failure, neglect, or refusal to report. Such action of the board shall be final, and subject only to review by a court of competent jurisdiction. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly a part of section 23 except that "of beer or wine" was inserted after "importer" and "may" was substituted for "must" before "note" and "estimate."

ASSESSMENT ROLL.

SEC. 26b. The board shall, on or before the last day of the month when the report is due, assess the excise tax due hereunder, and prepare and complete an assessment roll showing the amount of the excise tax assessed against each manufacturer and importer of beer or wine

and immediately deliver such assessment roll to the State Controller. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly contained in section 26 except that the date on or before which the board must assess the excise tax was changed from the tenth day of the month to the last day of the month.

PAYMENT OF EXCISE TAX ON BEER AND WINE.

SEC. 26c. The excise tax herein required to be paid by the manufacturer or importer of beer or wine shall be payable in monthly installments to the State Controller for each and every calendar month. The amount of such excise tax for each month shall be paid on or before the twentieth day of the second calendar month following the month in which such excise tax accrued, and if not paid prior thereto, shall become delinquent at midnight of said day, and ten per cent penalty shall be added thereto for delinquency. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly contained in section 26 except that "of beer or wine" was inserted after "importer" and the due date for payment of the tax was changed from the tenth day to the twentieth day of the second calendar month and "midnight" was substituted for "five o'clock in the afternoon."

INVESTIGATIONS BY BOARD; SUBSEQUENT ASSESSMENTS; PETITION FOR HEARING; OVERPAYMENT OF TAX; REFUNDS; DISTILLED SPIRITS TAX LEVIES.

SEC. 27. If any examinations or investigations made by the board shall disclose that any reports theretofore filed with the board by beer or wine manufacturers or importers have shown incorrectly the amount of beer or wine sold or the excise tax accruing thereon, the board shall have the power, and is hereby authorized, to make such changes by a subsequent assessment as may be necessary to correct the errors disclosed. The board shall give to any such manufacturers or importers notice of any such subsequent assessment and the amount thereof and any such manufacturer or importer against whom any such subsequent assessment has been made may petition for a rehearing upon such subsequent assessment within thirty days after service of the notice thereof, and the board shall reconsider and upon reconsidering such subsequent assessment shall grant any such manufacturer or importer an oral hearing and shall give any such licensee ten days notice of the time and place thereof; which place shall be either at Sacramento or at the city of licensee's premises or approximate to such premises if not located in a city. The board shall have the power to continue the hearing from time to time as may be necessary. Notice of the board's order or decision upon a petition for rehearing shall be served upon the licensee and if the subsequent assessment is affirmed it shall become due and payable at the time of such service of the notice thereof.

The board may likewise in any assessment roll give credit to any manufacturer or importer for overpayments of excise tax shown to the

satisfaction of the board to have been paid by any such manufacturer or importer or for excise taxes paid by any such manufacturer or importer upon beer or wine returned to such manufacturer or importer after sale or transfer of possession and which has become unsalable without fraud, connivance or collusion on the part of such manufacturer or importer.

If the board determines that any tax or penalty has been paid more than once, or has been erroneously or illegally collected or computed, and if such overpayment, collection or computation for any reason can not be adjusted or corrected in subsequent assessments as provided in this section, the board shall certify to the State Board of Control the amount collected in excess of what was legally due, from whom it was collected, or by whom paid, and if approved by that board the same shall be credited on any taxes then due fro. he manufacturer or importer under this act and the balance shall be refunded to the manufacturer or importer, but no such credit or refund shall be allowed after three years from the date of overpayment.

If, after giving effect to the provisions of section 24.2, any examinations or investigations made by the board shall disclose that the amount of excise stamps purchased from the board by any rectifier or wholesaler is not sufficient to represent payment of the excise tax imposed upon the sale of distilled spirits sold by such rectifier or wholesaler, the board shall have the power, and is hereby authorized to make a levy against such rectifier or wholesaler in the amount of the deficiency in the payment of the distilled spirits excise tax so disclosed. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted the first paragraph of the former section; added "beer or wine" before "manufacturers" and before "sold"; and added all provisions following the first sentence.

NOTICE OF DISTILLED SPIRITS EXCISE TAX LEVY.

SEC. 27a. The board shall give to any manufacturer, wholesaler, rectifier or importer of distilled spirits against whom any levy is made under the provisions of section 27 of this act notice of such levy. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

PETITION FOR RELEVY.

SEC. 27b. Any wholesaler or rectifier against whom a levy is made by the board under the provisions of sections 27 or 27a hereof may petition for a relevy thereof within 15 days after service of the notice thereof. If such a petition for relevy is not filed within said 15 day period the amount of the levy becomes final at the expiration thereof. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

HEARING ON PETITION FOR RELEVY; NOTICE OF DECISION.

SEC. 27c. If a petition for relevy under section 27b is filed within said 15 day period the board shall reconsider the levy, and if the petitioner has so requested in his petition, shall grant said petitioner an oral hearing and shall give the petitioner 10 days notice of the time and place thereof. The board shall have the power to continue the hearing from time to time as may be necessary.

Notice of the board's order or decision upon a petition for relevy shall be served upon the petitioner. Any levy made by such order or decision of the board shall become due and payable at the time of the service of the notice thereof. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

PAYMENT OF DISTILLED SPIRITS EXCISE TAX LEVY.

SEC. 27d. Upon payment to the board of the amount of any levy paid under the provisions of sections 27, 27b or 27c hereof the board shall credit the distilled spirits excise tax stamp account of the wholesaler or rectifier against whom the levy was made with the amount of such payment for the period for which such levy was made. Thereupon, the board shall set aside distilled spirits excise stamps in an amount equivalent to the amount of such levy so paid. Such distilled spirits excise tax stamps so set aside shall not be delivered to the wholesaler or rectifier against whom the levy was made, but within 30 days from the payment of the amount of the levy the board or its employees shall destroy the same in the presence of a representative of the Department of Finance. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

PENALTY FOR REFUSAL TO PERMIT EXAMINATION AND FOR ALTERING OR FALSIFYING RECORDS.

SEC. 28. Any person refusing to permit the board or any of its representatives to make any inspection or examination for which provision is made in this act or failing to keep books of account as may be prescribed by the board or failing to preserve such book for the inspection of the board for such time as the board may deem necessary, and any person altering, canceling or obliterating entries in such books of account for the purpose of falsifying the records of sales of alcoholic beverages made under this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

Any person who shall erase, remove, obliterate, destroy or render illegible in any manner, any serial numbers, stamps, marks, brands, legends or other information required by Federal or State law to be attached or placed upon any packages or original cases containing

alcoholic beverages, before the contents of such packages or cases h
been entirely removed shall be guilty of a misdemeanor. *(Stat*
1937, ch. 758; operative July 1, 1937.)

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, inserted examination" after "inspection" and added the second paragraph.

EXEMPTION OF SALES TO ANOTHER MANUFACTURER IMPORTER.

SEC. 29. Repealed by Statutes 1937, ch. 758; operative July 1937.

History.—Enacted Stats. 1935, p. 1123, providing for exemption of ex tax on sales of alcoholic beverages made by one manufacturer or importe another manufacturer or importer.

ACTION TO COLLECT DISTILLED SPIRITS TAX DEFICIEN

SEC. 30. The board is authorized to bring such legal actions may be necessary to collect any deficiency in the tax required to paid under section 24 of this act and, upon the board's request, Attorney General shall bring such actions. *(Statutes 1937, ch. 7 operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted the former provisions of the section and substituted the present section. former section provided for the exemption of the excise tax on export sale alcoholic beverages.

SUMMARY ACTION TO COLLECT BEER AND WINE TAX.

SEC. 31. In any case in which any tax, interest or penalty impo under section 23 of this act is not paid when due, the Controller s notify the board and may file in the office of the county clerk of S ramento County or any other county a certificate specifying amount of the tax, interest and penalty due, the name and last kno address of the manufacturer or importer of the beer or wine lia for same, that the board has complied with all the provisions of act, in relation to the computation and levy of the tax and a requ that judgment be entered against such manufacturer or importer the amount of the tax, interest and penalty set forth in the certific The county clerk immediately upon the filing of such certificate sh enter a judgment for the people of the State of California agai such manufacturer or importer in the amount of the tax, interest penalty set forth in the certificate. The judgment may be filed by county clerk in a loose-leaf book entitled "Special Judgments State Excise Tax." *(Statutes 1937, ch. 758; operative July 1, 193*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, inse "section 23" after "under" and added "of the beer or wine"; and omitted but the first paragraph of the former section. The subsequent paragra of the former section are contained in the present sections 31a, 31b, 31c, 31e, 31f and 31g with amendments thereto.

LIEN OF TAX.

SEC. 31a. An abstract of such judgment or a copy thereof m be recorded with the county recorder of any county and from the t

of such recording, the amount of the taxes, interest and penalty therein set forth shall constitute a lien upon all the real property of such manufacturer or importer in such county, owned by him or which he may afterwards and before the lien expires acquire, which lien shall have the force, effect and priority of a judgment lien. Execution shall issue upon such a judgment upon the request of the Controller in the same manner as execution may issue upon other judgments, and sales shall be held under such execution as prescribed in the Code of Civil Procedure. In all proceedings under this section the Controller shall be authorized to act on behalf of the people of the State of California. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 31.

NOTICE TO WITHHOLD PAYMENTS TO DELINQUENT BEER AND WINE MANUFACTURERS AND IMPORTERS.

SEC. 31b. In the event that any such manufacturer or importer is delinquent in the payment of the excise tax herein provided for, the Controller shall notify the board forthwith and may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control, any credits or other personal property belonging to such manufacturer or importer, or owing any debts to such manufacturer or importer, at the time of receipt by them of such notice, and thereafter any person so notified shall neither transfer nor make other disposition of such credits, other personal property or debts until the Controller shall have consented to a transfer or disposition, or until twenty days shall have elapsed from and after the receipt of such notice. All persons so notified must, within five days after receipt of such notice, advise the Controller of any and all such credits, other personal property or debts, in their possession, under their control or owing by them, as the case may be. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 31.

SEIZURE AND SALE OF PROPERTY OF DELINQUENT MANUFACTURERS AND IMPORTERS.

SEC. 31c. Whenever any such manufacturer or importer shall be delinquent in the payment of the excise tax herein provided for, the Controller or his duly authorized representative may proceed forthwith to collect the excise tax due from such manufacturer or importer in the following manner: The Controller shall seize any property, real or personal, of the taxpayer, and thereafter sell at public auction such property so seized, or a sufficient portion thereof, to pay the excise tax due hereunder, together with any penalty or penalties imposed hereby for such delinquency, and any and all costs that may have been incurred on account of such seizure and sale. Notice of such intended sale and the time and place thereof, shall be given to such delinquent manufacturer or importer and to all persons appearing of record to have an interest in such property, in writing at least ten days before the date set for such sale by inclosing such notice in an envelope

addressed to said manufacturer or importer at his last known residence or place of business in this State if any, and depositing same in the United States registered mail, postage prepaid, and by publication for at least ten days before the date set for such sale in a newspaper of general circulation published in the county or city and county in which the property seized is to be sold; provided, however, that if there be no newspaper of general circulation in such county or city and county, then by the posting of such notice in three public places in such county or city and county for said ten day period. The said notice shall contain a description of the property to be sold, together with a statement of the amount of the excise taxes, penalties and costs, the name of the manufacturer or importer and the further statement that, unless such excise taxes, penalties and costs are paid on or before the time fixed in said notice for such sale, said property, or so much thereof as may be necessary, will be sold in accordance with law and said notice. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 31.

PROCEEDS OF SALE.

SEC. 31d. At any such sale, the property shall be sold by the Controller or by his duly authorized agent in accordance with law and said notice, and the Controller shall deliver to the purchaser a bill of sale for the personal property, and a deed for any real property so sold, and such bill of sale or deed shall vest title in the purchaser subject to a right of redemption as prescribed in the Code of Civil Procedure upon sales of real property on execution. The unsold portion of any property so seized may be left at the place of sale at the risk of such manufacturer or importer. If, upon any such sale, the moneys so received shall exceed the amount of all license taxes, penalties and costs due the State from such manufacturer or importer, any such excess shall be returned to such manufacturer or importer, and his receipt therefor obtained; provided, however, that if any person having an interest in or lien upon the property has filed with the Controller prior to any such sale notice of such interest said Controller shall withhold any such excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If, for any reason, the receipt of such manufacturer or importer shall not be available, the Controller shall deposit such excess moneys with the State Treasurer, as trustee for such owner, subject to the order of such manufacturer or importer, his heirs, successors or assigns. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 31.

SUIT TO COLLECT BEER AND WINE TAX.

SEC. 31e. The Controller must also immediately transmit notice of such delinquency to the Attorney General who shall at once proceed to collect all sums due to the State from any such manufacturer or importer by bringing suit against the necessary parties to effect forfeiture of the bond or bonds of the manufacturer or importer, reduc-

ing any deficiency to judgment against the manufacturer or importer. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 31.

COLLECTION REMEDIES CUMULATIVE.

SEC. 31f. It is expressly provided that the foregoing remedies of the State under sections 31, 31a, 31b, 31c, 31d and 31e shall be cumulative and that no action taken by the board, Controller or Attorney General shall be or be construed to be an election on the part of the State or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly contained in section 31 except that "under sections 31, 31a, 31b, 31c, 31d and 31e" was added by Stats. 1937, ch. 758.

ASSESSMENT ROLL PRIMA FACIE EVIDENCE OF EXCISE TAX.

SEC. 31g. In any suit brought to enforce the rights of the State under section 31f the assessment roll prepared by the board pursuant to section 26 of this act, or a copy of so much thereof as is applicable in such suit, duly certified by the Controller showing unpaid excise taxes assessed against any such manufacturer or importer, shall be prima facie evidence of the assessment of the excise tax, the delinquency thereof, the amount of the excise tax, penalties and costs due and unpaid to the State, that such manufacturer or importer is indebted to the people of the State of California in the amount of such excise tax and penalties therein appearing unpaid and that all the forms of law in relation to the assessment and levy of such excise tax have been fully complied with by all persons required to perform administrative duties under this act, but the correctness of such assessment or the fact as to whether or not such excise taxes are or are not due shall be reviewed and determined by the court in any such action. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly contained in section 31 except that Stats. 1937, ch. 758, added "under section 31f" and the last clause of the section.

ACTION TO RECOVER TAX.

SEC. 32. Any action to recover any excise tax levied pursuant to this act and paid under protest must be instituted within sixty days after the payment of such excise tax, and failure to bring suit within said sixty days shall constitute waiver of any and all demands against this State on account of alleged overpayment of excise taxes hereunder. No grounds of illegality of the excise tax shall be considered by the court other than those set forth in the protest filed at the time of the payment of the excise tax.

If in any such action judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any excise taxes due

from the plaintiff under this act, and the balance of the amount of the judgment shall be refunded to the plaintiff. In any such judgment, interest shall be allowed at the rate of six per cent per annum upon the amount of excise tax found to have been illegally collected from the date of payment of such excise tax to the date of allowance of credit on account of such judgment or to a date preceding the date of the refund warrant by not more than thirty days, such date to be determined by the Controller.

In no case shall any judgment be rendered in favor of the plaintiff in any action brought against the State Treasurer to recover any excise tax paid hereunder, when such action is brought by or in the name of an assignee of the manufacturer or importer paying said excise tax, or by any person, other than the person who has paid such excise tax. *(Original section; Statutes 1935, p. 1123.)*

DISTILLED SPIRITS EXCISE STAMPS.

SEC. 33. The tax imposed by section 24 of this act upon the sale of distilled spirits shall be collected from rectifiers and wholesalers of distilled spirits and payment of the tax shall be evidenced by stamps issued by the board to such rectifiers and wholesalers. In exceptional instances the board may sell such stamps to on- and off-sale distilled spirits licensees and other persons. No rectifier or wholesaler of distilled spirits, shall purchase distilled spirits excise stamps, except from the board or its duly authorized agents, nor dispose of such excise stamps, except to on- or off-sale distilled spirits licensees when making sales of distilled spirits to such licensees as provided in section 32b. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. This section formerly contained five paragraphs most of the provisions of which were placed in sections 33a, 33b and 33c by Stats. 1937, ch. 758. The provisions of the section as amended were added by Stats. 1937, ch. 758. The section formerly provided for the sale of excise stamps to manufacturers and importers as well as to rectifiers and wholesalers.

CHARACTER OF STAMPS; BOARD TO KEEP RECORDS.

SEC. 33a. The excise stamps shall be of such size, type and character as the board shall determine and shall be of a character, design and process which will give the State the maximum amount of protection against counterfeiting. The board shall have full charge and control of the issuance, securing, or purchase and of the sale of all such stamps and shall keep a record of all stamps sold. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 33. This section was formerly contained in section 33 and is substantially the same as the former language.

Contract for stamps.—The State Board of Equalization is not authorized by section 33 of the act to enter into a valid contract for the printing and purchasing of excise stamps without first obtaining the approval of the Department of Finance as provided in section 675 (a) of Political Code. (*Ireland* vs. *Riley et al* (1935), 11 Cal. App. (2d) 70.)

DELIVERIES OF DISTILLED SPIRITS TO RETAILERS MUST BE ACCOMPANIED WITH STAMPS.

SEC. 33b. All distilled spirits delivered by any rectifier or wholesaler of distilled spirits to any person holding an on- or off-sale distilled spirits license issued under this act, must be accompanied by a sufficient number of stamps purchased from the board, to stamp the packages containing such distilled spirits. Every rectifier or wholesaler of distilled spirits who delivers distilled spirits in violation of this section shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 33. This section was formerly contained in section 33.

ATTACHING AND CANCELING OF STAMPS.

SEC. 33c. Such stamps shall be attached by the holders of on- or off-sale distilled spirits licenses issued under this act immediately upon opening the original case in which the distilled spirits were packed and in which such distilled spirits were purchased from the rectifier or wholesaler. At the time such stamps are attached to the packages of distilled spirits, they shall immediately be canceled by indelibly writing or stamping thereon the license number of the licensee attaching the stamp and the date of cancellation. In the case of distilled spirits not in original cases at the time of purchase the stamps shall be attached immediately upon bringing such distilled spirits upon the premises for which such on- or off-sale licenses are issued. Any on- or off-sale distilled spirits licensee who shall fail to attach and cancel stamps as provided by this section shall be guilty of a misdemeanor.

The board shall prescribe rules and regulations governing the handling, affixing, canceling, and other matters pertaining to distilled spirits excise stamps. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 33. The first and third sentences of this section were formerly contained in the first paragraph of section 33. The second sentence was formerly contained in the last paragraph of section 33 as it formerly read. The last two sentences were added by Stats. 1937, ch. 758.

RETURN OF DISTILLED SPIRITS TO WHOLESALER OR RECTIFIER; ISSUANCE OF NEW STAMPS; REFUNDS.

SEC. 33d. Whenever distilled spirits are returned by a retail licensee to the rectifier or wholesaler from whom such distilled spirits were purchased and excise stamps are attached to the containers of such distilled spirits and canceled as provided in this act, the rectifier or wholesaler may petition the board to issue new stamps to replace the stamps so canceled. The board shall direct an agent to investigate the matter and if such agent, after investigation, finds that new stamps should be issued, such agent shall supervise the removal and destruction of such stamps. The board may then issue new stamps to replace those destroyed.

When a licensee shall possess distilled spirits excise tax stamp which are unaffixed to packages and which shall have been damaged s as to be unusable, or shall possess distilled spirits excise stamps o denominations no longer used by him, the board may at their discretio either exchange such distilled spirits excise stamps for others of th same or other denominations or refund to the licensee the origina value of the stamps. *(Statutes 1937, ch. 758; operative July 1, 1937.*

History.—Added by Stats. 1937, ch. 758.

BOARD MAY REPURCHASE STAMPS.

SEC. 33e. The board, in its discretion, may refund the value an repurchase excise stamps from any distilled spirits manufacturer, rec tifier, importer, or wholesaler, when such licensee discontinues business *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

UNLAWFUL SALES, DELIVERIES OR POSSESSION OF DIS TILLED SPIRITS; SEIZURE OF DISTILLED SPIRITS.

SEC. 34. (a) It shall be unlawful for any unlicensed person t have in his possession any distilled spirits upon the containers of whic stamps are required to be attached and canceled under this act unles the stamps so required are so attached and canceled as required b this act.

(b) It shall be unlawful for any unlicensed person or for an on- or off-sale distilled spirits licensee to sell any distilled spirits unles the stamps required by this act to be attached to the packages of suc distilled spirits are so attached and canceled as required by this act.

(c) It shall be unlawful for any on-sale distilled spirits license to serve or remove distilled spirits from any packages unless the stamp required by this act to be attached to the packages are so attached an canceled as required by this act.

(d) It shall be unlawful for any person to deliver to the premise of any on- or off-sale distilled spirits licensee or for any on- or off-sal distilled spirits licensee to have upon his licensed premises or for an person to possess any distilled spirits unless the container of such dis tilled spirits bear a label plainly indicating the quantity and proo strength of the contents of such containers and the name of the manu facturer, rectifier, importer or wholesaler thereof. To the extent tha such information is blown into the glass of any such container, it shal constitute a compliance with this paragraph.

(e) It shall be unlawful for any rectifier or wholesaler of dis tilled spirits to deliver to the premises of any on- or off-sale distilled spirits licensee or for any on- or off-sale distilled spirits licensee to sel or have in his possession at the licensed premises distilled spirits in packages containing more than one gallon and, after December 31 1937, in packages containing less than one-half pint; except that the provisions of this paragraph shall not apply to packages of distilled spirits in containers less than one-half pint which are sold and delivered

to railroad, sleeping car or steamship companies for use and consumption on trains or boats.

(f) It shall be unlawful for any unlicensed person or any on- or off-sale distilled spirits licensee to have in his possession any distilled spirits in packages or containers larger than one gallon, unless such distilled spirits have been sold and delivered to such person or licensee by the holder of an industrial alcohol dealer's, distilled spirits manufacturer's, brandy manufacturer's or rectifier's license for use in the trades, professions, or industries.

(g) It shall be unlawful for any industrial alcohol dealer, distilled spirits manufacturer, brandy manufacturer or rectifier to deliver undenatured ethyl alcohol or other distilled spirits in packages of more than one gallon for use in the trades, professions or industries, unless the packages bear a label plainly stating the true and correct name and address of such industrial alcohol dealer, distilled spirits manufacturer, brandy manufacturer or rectifier.

Any person violating any of the foregoing provisions of this section shall be guilty of a misdemeanor.

The board may seize any distilled spirits sold, served, removed, possessed, delivered, or held in any manner whatsoever in violation of this section. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added paragraphs (a), (f) and (g) and omitted provision for summary destruction of distilled spirits sold, possessed or delivered in violation of the section; added provisions relating to violations by unlicensed persons and for violation of paragraph (e) by retail licensees; added provisions prohibiting packages of distilled spirits of less than one-half pint; and added to paragraph (d) the words "rectifier, importer or wholesaler" and the provision for blowing information into the glass of distilled spirits containers.

UNLAWFUL SALE OR POSSESSION OF STAMPS.

SEC. 35. It shall be unlawful for any person other than the board or its duly authorized agents to sell, purchase, give away, or possess any distilled spirits excise stamps unless such stamps are attached to packages of distilled spirits except as such sale, purchase, gift or possession is elsewhere permitted in this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, inserted "purchase" after "sell" and "or possess" after "give away" and the last clause beginning with "except"; omitted language referring to specific licensees who were authorized to sell or give away stamps; and omitted provision making violation of the section a misdemeanor.

UNLAWFUL POSSESSION OF STAMPS BY RETAILERS.

SEC. 35a. It shall be unlawful for any on- or off-sale licensee to have in his possession, either on or off his licensed premises, any distilled spirits excise stamps which are unattached to containers of distilled spirits except as elsewhere permitted in this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

PUNISHMENT FOR UNLAWFUL SALE OR POSSESSION OF STAMPS.

SEC. 35b. Any person violating the provisions of section 35 or 35a shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

SEIZURE OF STAMPS.

SEC. 35c. The board may seize any excise stamps sold, purchased, given away or possessed contrary to the provisions of this act and after thirty days from the date of seizure it shall destroy the same. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

COUNTERFEITING OR FRAUDULENT USE OF STAMPS.

SEC. 36. Every person who makes, sells, or uses any false or counterfeit stamp or die for printing or making stamps which is in imitation of or purports to be a lawful stamp, or die of the kind before mentioned in this act, or who procures the same to be done, and every person who shall remove or cause to be removed, from any package of distilled spirits any stamp denoting the tax thereon, with intent to reuse such stamp, or who with intent to defraud the State, knowingly uses, or permits to be used any stamp removed from another package, or receives, buys, sells, gives away, or has in his possession, any stamp so removed, or makes any fraudulent use of any stamp for distilled spirits, shall be guilty of a felony and shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than six months nor more than three years in the State prison. *(Original section; Statutes 1935, p. 1123.)*

REFILLING OF DISTILLED SPIRITS PACKAGES UNLAWFUL.

SEC. 36a. Every person, whether licensed or not, who refills or causes to be refilled with distilled spirits any distilled spirits package to which excise stamps are or have been attached shall be guilty of a felony. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

DESTRUCTION OF EMPTIED DISTILLED SPIRITS BOTTLES; UNLAWFUL USE OF EMPTIED BOTTLES.

SEC. 36b. (1) Any on-sale distilled spirits licensee or any person employed by such licensee who empties a bottle containing distilled spirits shall immediately after emptying a bottle destroy the bottle;

(2) Every on-sale distilled spirits licensee shall provide at all service counters where distilled spirits are poured from bottles the necessary facilities for the destruction of bottles so that persons emptying distilled spirits bottles may immediately destroy the same as herein provided;

(3) Any alcoholic beverage licensee, except a manufacturer or rectifier of distilled spirits, who shall be found in possession of an emptied distilled spirits bottle which has not been destroyed, shall be guilty of a misdemeanor and, in addition to any other punishment provided by law, shall be fined five dollars for each such emptied distilled spirits bottle found on his premises;

(4) It shall be unlawful to use emptied distilled spirits bottles for any purpose, and it shall be unlawful to purchase, sell, give away or in any manner deal in such emptied distilled spirits bottles. The possession by any person of such bottles in quantities greater than twenty bottles, shall be considered prima facie evidence of a violation of this paragraph. Any person using or dealing in emptied distilled spirits bottles shall be guilty of a misdemeanor and, in addition to any other punishment provided by law, may be fined five dollars per bottle for each such emptied distilled spirits bottle found in his possession. It shall be the duty of all agents and employees of the State Board of Equalization and of all peace officers to destroy emptied distilled spirits bottles wherever found. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

DISPOSITION OF FUNDS COLLECTED.

SEC. 37. All moneys collected as license fees and under the excise tax provisions of this act shall be deposited in the State treasury to the credit of the alcohol beverage control fund, which fund is hereby created. Moneys in said fund are hereby appropriated as follows:

1. Six hundred thousand dollars for expenditure by the board in carrying out the provisions of this act for collecting the excise taxes levied by this act;

2. Twelve thousand dollars, or so much thereof as may be necessary, for expenditure by the Controller in carrying out the provisions of this act requiring the collection of excise taxes;

3. Sixty thousand dollars to be used by the State Department of Public Health for enforcement work directed toward preventing the manufacture, sale or transportation of adulterated, misbranded or mislabeled alcoholic beverages;

4. One million four hundred thousand dollars to pay the salaries and expenses of auditors, inspectors and clerks employed by the board and to defray the necessary expenses arising by reason of the administration and enforcement of the provisions of this act;

5. Ten thousand dollars for expenditure by the State Department of Finance in auditing the revenues and expenditures resulting from the provisions of this act;

6. Fifty per cent of all moneys collected from fees, to be paid semi-annually to the counties, cities and counties, and cities of this State in the proportion that the amount of the fees collected in the particular county, city and county, or city bears to the total amount so collected throughout the State, and the State Controller shall during the months of April and October of the year, draw his warrants upon said fund in favor of the treasurer of each county, city and county, and city for the amount to which each is entitled hereunder;

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7. The expenditures authorized by subdivisions 1, 2, 3, 4, 5 and 9 of this section shall be made exclusively from the remaining fifty per cent of moneys collected from fees and no part thereof from the fifty per cent of fees payable to counties, cities and counties, and cities under the provisions of subdivision 6 of this section;

8. Such amount as is necessary for the allowance of the refunds provided for in this act;

9. In addition to any other appropriation, for expenditure by the board in carrying out the provisions of this act the sum of four hundred thousand dollars, or so much thereof as may be necessary, together with such amounts as may be made available pursuant to section 661 of the Political Code;

10. Any remaining balance to be transferred to the general fund on the order of the Controller.

The moneys to be used by the State Department of Public Health for enforcement work shall be expended as provided in "An act preventing the manufacture, sale or transportation of adulterated, mislabeled or misbranded food, liquor and drugs, and making an appropriation," approved March 11, 1907. The Director of Public Health shall communicate to the State Board of Equalization any findings which indicate that such act has been violated by any holder of a license under this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, changed subdivision 6 to provide for semiannual payment to cities, counties and cities and counties in the months of April and October of each year and added "9" in subdivision 7 and substituted "6" for "5" in the last phrase of subdivision 7; and added subdivision 9.

Note.—The appropriation contained in subdivision 9 of this section was eliminated by the Governor under the provisions of section 34 of Article IV of the State Constitution.

BOARD AUTHORIZED TO MAKE RULES AND REGULATIONS.

SEC. 38. The board shall administer all of the provisions of this act and to that end shall prescribe all necessary rules and regulations to carry out such provisions. For the performance of its duties the board shall have the power conferred by section 353 of the Political Code. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, changed the reference to the Political Code from section 3692 to section 353 of that code; omitted provision relating to the board's power to require reports from licensees or transportation companies now contained in section 38a; omitted provision relating to board's examination of books and records of any licensee and inspecting licensed premises now contained in section 38b; omitted provision relating to administering and certifying of oaths now contained in section 38c; and omitted provision relating to members of the board and its employees having powers of peace officers in the enforcement of the act.

BOARD MAY REQUIRE REPORTS.

SEC. 38a. In addition to any other reports required under this act the board shall have the power by rule and regulation, and otherwise to require additional, other or supplemental reports from licensees, common and private carriers and other persons and to prescribe the form, including verification, of the information to be given on, and the times for filing of such additional, other or supplemental reports. The failure or refusal of any such person to render the reports so required

under this paragraph shall constitute a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 38.

BOARD MAY EXAMINE BOOKS AND RECORDS.

SEC. 38b. The board may make any examination of the books and records of any licensee or other person and may visit and inspect the premises of any licensee it may deem necessary to perform its duties under this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 38.

POWER TO ADMINISTER OATHS.

SEC. 38c. The members of the board and the persons employed by the board for the administration and enforcement of the provisions of this act shall have the authority to administer and certify oaths in the administration and enforcement of this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 38.

BOARD MEMBERS AND EMPLOYEES HAVE POWERS OF PEACE OFFICERS; SIRENS AND RED LIGHTS ON VEHICLES; EXECUTIVE OFFICERS MAY JOIN NATIONAL ASSOCIATION FOR LIQUOR REGULATION.

SEC. 38d. The members of the board and the persons employed by the board for such purposes shall have all the powers of peace officers in the enforcement of the penal provisions of this act, the rules and regulations of the board adopted under the provisions of this act and any other penal provisions of law of this State prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding or mislabeling of alcoholic beverages or intoxicating liquors.

Any motor vehicle as the board shall determine, which is owned by the State and used by the board in enforcing the provisions of this act, may be equipped with a siren and a red light visible from in front of such vehicle, but such siren or red light shall not be used except when such vehicle is operated in the immediate pursuit of an actual or suspected violator of this act.

The board may authorize any of its executive officers to join or subscribe to any national association or service having as its purpose the gathering and supply of information relative to the technique of liquor regulation, control or administration. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 38.

BEER PRICE POSTING.

SEC. 38e. Each manufacturer, importer and wholesaler of beer shall forthwith file and thereafter maintain on file with the board, in

triplicate and in such form as the board may provide a written schedule of selling prices charged by such licensee for beer sold and distributed by such licensee within the State of California for delivery and use therein; provided, however, that such schedule of prices so filed, may be changed or modified from time to time by the licensee filing the same, by filing with the board a new and complete schedule of such prices or an amendment thereto of changed or modified prices as the board may by regulation require. The first schedule of prices filed by a licensee shall be effective immediately upon filing but an amendatory schedule or amendments to a prior filed schedule shall not become effective until ten (10) days after the filing date thereof; provided, that if any licensee has filed a new schedule to meet lower posted and filed competing prices a trade area, and such prices thus posted are not lower than such competing prices sought to be met, then such new schedule or amendments shall go into effect immediately if such competing prices are already effective, or at the same time as such competing prices become effective. Such price schedule so filed shall be subject to public inspection and shall not in any sense be considered confidential and each said licensee shall retain in his licensed premises for public inspection a copy of his effective posted and filed schedule. Upon the filing of an original schedule of prices and after the effective date of any schedule of amendatory prices, all prices therein stated shall be strictly adhered to by the filing licensee and any departure or variance therefrom by a licensee of his prices so filed and posted and in effect shall constitute and be a misdemeanor, providing that the violation of posted prices as to each article covered by a particular sale or transaction shall not constitute a separate and single misdemeanor or violation of this section as to each such article, but each such sale or transaction involving a violation of posted prices under this section shall constitute but a single offense or violation of this section regardless of the number of articles covered by such sale or transaction.

Any director, officer, agent or employee of any licensee who knowingly assists or aids in the violation of this section or any effective posted price or any rule or regulation of the board passed to carry out the provisions of this section shall be guilty of such violation equally with the licensee.

The board may adopt such other rules and regulations as will foster and encourage the orderly wholesale marketing and wholesale distribution of beer; provided, that no such action shall be taken by the board except after public hearing and ten (10) days notice to all licensed manufacturers of beer in California of the time and place of such hearing and of the character of the action intended to be taken by the board.

No manufacturer, importer or wholesaler mentioned in this section shall be prohibited the right of choice of customers, nor shall any such licensee be prohibited from dividing his customers into functional classes and establish different prices for the same article for such different functional classes, such different functional classes being based upon the manner in which such classes sell beer, as wholesaler or retailer.

Any trade association, having as members licensed beer manufacturers representing more than half of the volume of beer produced and

ld in California for three months prior to the date of a filing of any it authorized in this section, may maintain an action to enjoin a ntinuance of any act or acts in violation of this section or any regu- tion adopted pursuant thereto, and if injured thereby for the recov- y of damages. If in such action the court shall find the defendant violating or has violated any of the provisions of this section or any gulation adopted pursuant thereto the court shall enjoin the defend- nt from a continuance or further violation thereof and it shall not be ecessary that actual damages to the plaintiff be alleged or proven in ch action and proof of a violation of this section or any regulation lopted in pursuance thereof shall be presumptive evidence of an tention to continue to violate such section or any such regulation. ny defendant in any action brought under the provisions of this ction or any person who may be a witness therein under sections 021, 2031 or 2055 of the Code of Civil Procedure of this State and he books and records of any such defendant or witness may be brought nto court and such books and records may be introduced by reference nto evidence; provided, however, that no information so obtained ay be used against the defendant or any such witness as a basis for misdemeanor prosecution under the provisions of this section.

The board shall not suspend or revoke the license of any licensee or a violation of the provisions of this section or a regulation adopted ursuant thereto unless such licensee shall have committed, within a eriod of one year, at least three separate violations of the provisions f this section or of any rule or regulation adopted by the board pur- uant thereto and such violations shall have been proven by all or any f the following methods, to wit: (1) a conviction for misdemeanor or 2) a judgment in a civil suit for injunction as herein provided or 3) by a finding of the board if hearing is held in accordance with ections 40 to 48 inclusive herein, in which event the board may suspend r revoke the license of such licensee. *(Statutes 1937, ch. 758; opera- ive July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

DENIAL OF LICENSES.

SEC. 39. A written report of a member of the board or of an employee of the board engaged in the enforcement of this act disclosing that an applicant for a license or the premises for which a license is applied are not qualified for a license under this act shall constitute grounds for the denial of an application for a license.

Immediately upon the denial of any application for a license the board shall notify the applicant thereof in writing. Within ten days after mailing the notice the applicant may present his written petition for a license to the board.

Upon receipt by the board of a petition for a license in proper form it shall be referred to a representative of the board for hearing.

Protests may be made to the board at any time prior to the issuance of a license against either the original issuance of a license or the renewal of a license.

Protests must be in writing and filed in the main office of the board at Sacramento, and must state one or more grounds which would

authorize the board, to deny or refuse the issuance of the license. The original copy of the protest must be verified unless made by public officers acting in their official capacity.

Upon receipt by the board of a protest in proper form it shall be referred to a representative of the board for hearing.

If a license has been issued to the applicant before receipt of the protest by the board, the protest shall be considered as a complaint against the licensee and a hearing had thereon as if a complaint had been filed. *(Original section; Statutes 1935, p. 1123.)*

COMPLAINTS AGAINST LICENSEES.

SEC. 40. Complaints may be made to the board by any person against any licensee. Complaints must be in writing and must state a violation of section 38e or one or more grounds which would authorize the board to suspend or revoke the license or licenses of the licensee against whom the complaint is made.

A written report of a member of the board or of an employee of the board engaged in the enforcement of this act, or of a public officer disclosing a violation of section 38e or one or more grounds for the suspension or revocation of the license or licenses of any licensee shall be deemed a complaint against the licensee within the meaning of this act, even though not in the form of a complaint.

The original copy of complaints must be verified unless made by public officers acting in their official capacity or by employees of the board engaged in the enforcement of this act.

The following are the grounds which constitute a basis for the suspension or the revocation of licenses:

1. When the continuance of such license would be contrary to public welfare or morals; but proceedings under section 40 upon this ground shall not be deemed a limitation upon the board's authority to proceed under Article XX, section 22 of the Constitution of this State.

2. Except as limited by section 38e hereof, the violation or the causing or the permitting of a violation by a licensee of (a) this act, (b) any rules and regulations of the board adopted under the provisions of this act, (c) any other penal provisions of law of this State prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding or mislabeling of alcoholic beverages or intoxicating liquors.

3. The misrepresentation of a material fact by any applicant in obtaining any license hereunder.

4. The plea, verdict or judgment of guilty to any public offense involving moral turpitude charged against the licensee. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added "a violation of section 38e" and added subdivisions 1 and 4; and added in subdivision 2 the reference to section 38e and the provisions of clause (c).

COMPLAINTS BY LOCAL LEGISLATIVE BODIES.

SEC. 40.5. Complaints against any on-sale or off-sale licensee may be filed with the board by the legislative body of any city or city and

county in which the premises in question are located, or if said premises are in unincorporated territory, then by the board of supervisors of said county, requesting the suspension or revocation of any retail license. Upon the filing thereof, the board must provide for a public hearing thereon within the county in which said premises are located and determine whether or not such license should be revoked or suspended. Whenever the local legislative body shall certify that the public safety, health or welfare require an immediate hearing of such complaint, said public hearing shall be held within five (5) days after the filing of the complaint with the board. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

HEARINGS BEFORE REPRESENTATIVE OF BOARD.

SEC. 41. The board shall cause written notice of the time and place of hearing the protest, complaint or petition for a license to be given to the protesting or complaining party as well as the applicant, licensee or petitioner.

The hearing shall be set for a date not more than fifteen days nor less than five days subsequent to the mailing of the notice and shall be held in the county seat of the county in which the premises of the applicant or licensee are located.

Inclosed with a copy of the notice of the time and place of hearing sent to the applicant or licensee shall be a copy of the protest or complaint as filed with the board.

The failure of an applicant for a license or a licensee to appear before the representative of the board at the time set for the hearing, except for the intervention of an act of God, shall be deemed an admission by him of the facts or acts charged in the protest or complaint and thereupon the representative of the board shall have the power to act as if the facts charged in the protest or complaint were found to be true.

The board or any member thereof or any representative appointed by the board to conduct hearings shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the State.

Each witness who shall appear, by order of the board or member thereof or a representative appointed by it, shall be entitled to receive, if demanded, for each attendance the same fees and mileage allowed by law to witness in civil cases in the superior court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board or the representative. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, or a member thereof or a representative of the board, his fees and mileage may be paid from the funds appropriated for the use of the board in the administration of this act in the same manner as other expenses of the board are paid in the administration of this act.

The superior court in and for the county or city and county in which any inquiry, investigation, hearing or proceeding may be held by the board or a representative appointed by it shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, including books, accounts and documents as required by any subpoena issued by the board or any member thereof or a representative appointed by the board.

The board or any representative appointed by it, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the superior court, in and for the county, or city and county, in which the proceeding or hearing is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness had been subpoenaed in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpoena, or has refused to answer questions propounded to him in the course of such proceeding or hearing, and ask an order of said court, compelling the witness to attend or testify or produce said papers before the board or representative. The court, upon the petition of the board or any member thereof or a representative appointed by the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he did not attend and testify or produce said papers before the board or representative of the board. A copy of said order shall be personally served upon said witness, and service shall not be made by registered mail as otherwise provided in this act.

If it shall appear to the court that said subpoena was regularly issued by the board or member thereof or a representative of the board and the witness was legally bound to comply therewith, the court shall thereupon enter an order that said witness shall appear before the board or representative at a time and place to be fixed in such order, and testify or produce the required papers, and upon failing to obey such order said witness shall be dealt with as for contempt of court. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, changed the first paragraph by substituting "The board" for "Upon receipt of a representative of the board of a protest, a complaint or a petition for a license, the representative" in the first paragraph.

CONDUCT OF HEARINGS; DEPOSITION OF WITNESSES.

SEC. 42. All hearings and investigations before the board or any representative appointed thereby shall be governed by this act and other applicable provisions of law not inconsistent herewith and in the conduct of said hearings neither the board nor any representative appointed by it shall be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in such manner through oral testimony and printed records as is best calculated to

extend the substantial rights of the parties and carry out jointly the spirit and provisions of this act.

The board, or any member of the board or any representative appointed by it, or any party to the action or proceeding may, in any investigation or hearing before the board or a representative thereof cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the superior court of this State, and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts; provided that depositions taken outside of the State may be taken before any officer authorized to administer oaths. *(Original section; Statutes 1935, p. 1123.)*

CERTIFICATION OF FINDINGS TO BOARD.

SEC. 43. Within ten days after the hearing the representative of the board shall certify to the board his findings of ultimate fact whether the protest, complaint or petition is true or not, and in the case of hearings on complaints the representative may make recommendations in respect to the suspending or revoking of licenses. The findings and recommendations of the representative shall not be open to public inspection, either to the applicant, licensee, protestant, complainant or any other person. *(Original section; Statutes 1935, p. 1123.)*

NOTICE OF BOARD'S DECISION.

SEC. 44. After the findings of the representative of the board are filed, the board shall make its decision upon the petition for a license, protest or complaint, and shall notify the petitioner, protestant, complainant, and licensee thereof. Within ten days after the mailing of the notice, the petitioner, protestant, complainant or licensee may petition the board for a reconsideration of the cause. Such petitions shall be verified unless filed by a public officer acting in his official capacity. *(Original section; Statutes 1935, p. 1123.)*

REHEARING BY BOARD.

SEC. 45. Within thirty days after receipt by the board of a petition for reconsideration the board may itself rehear the entire matter de novo and if it holds such hearing shall within ten days after the conclusion thereof either affirm, modify or set aside its previous order. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, substituted "may" for "shall"; after "novo" inserted "and if it holds such hearing" and substituted "ten days after the conclusion thereof" for "said thirty."

Hearing de novo.—Section 45 as it read prior to the 1937 amendment made it a mandatory duty of the board itself upon the filing of a petition for reconsideration to hold a hearing and inquire into the whole matter in controversy (*Yee* vs. *The State Board of Equalization* (1936), 16 Cal. App. (2d) 417.)

COURT REVIEW OF BOARD'S ACTION.

SEC. 46. The person affected by any ruling, order or decision of the board in the making of an arbitrary assessment of taxes or an

additional assessment of taxes or on any ruling, order or decision on a petition for a license, a protest, complaint or any other matter, or on suspension or revocation of a license may, after exhausting the remedies such person may have with the board, and within thirty days after final action by the board, file an action in the superior court of California in and for the county of Sacramento. Said action shall be for a review of the ruling, order, decision or other official act of the board. Said court shall review all records on file with the board which pertain to said ruling, order, decision or other official act, and if furnished by the board, a transcript of evidence taken by the board, and said court shall take such additional relevant and competent evidence as said court may require or as may be submitted by the board or the person filing such petition for review and shall then render, according to the weight of evidence adduced before said court, judgment affirming, reversing or modifying the action of the board. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted all the former section and added the present section. This section formerly read as follows: "The action of the board on a petition for a license, a protest, complaint, or a petition for reconsideration shall be subject to review by any court of competent jurisdiction."

PETITION FOR RECONSIDERATION NOT A BAR TO REVIEW BY COURT.

SEC. 47. The filing of a petition for reconsideration with the board shall not be a bar to any application to the courts for relief and shall not prevent a court from reviewing or setting aside the action of the board upon a petition for a license, protest or complaint. *(Original section; Statutes 1935, p. 1123.)*

SERVICE OF NOTICE.

SEC. 48. Notice of any act of the board required by this act to be given may be signed and given by the board, its secretary or an employee of the board and may be made personally or by mail; if by mail service shall be made in the manner prescribed by section 1013 of the Code of Civil Procedure. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, substituted "Notice of any act of the board required by this act to be given may be filed and given by the board, its secretary or an employee of the board and" for "Service of the notices required by this act may be made."

NOTICE OF VIOLATION OF PURE FOOD ACT.

SEC. 48.5. The Chief of the Bureau of Food and Drug Inspection shall immediately notify the State Liquor Administrator of the conviction of any licensee under this act of any violation in connection with alcoholic beverages of an act entitled "An act for preventing the manufacture, sale or transportation of adulterated, mislabeled or misbranded foods and liquors a[nd] regulating the traffic therein, providing penalties, establishing a State laboratory for foods, liquors and drugs

and making an appropriation therefor," approved March 11, 1907, and shall send a copy of such notice to the chief liquor control officer of the district in which the premises of the licensee are situated. The respective officers shall promptly cause an investigation to be made and shall report to the board their recommendations as to suspension or revocation of the license of such licensee. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

NOTICE TO MANUFACTURERS, RECTIFIERS AND WHOLESALERS OF REVOKED OR SUSPENDED LICENSES.

SEC. 48.6. It shall be the duty of the board to notify all licensed manufacturers, manufacturers' agents, rectifiers and wholesalers of the names and license numbers of all alcoholic beverage licensees whose licenses have been suspended or revoked by the board. Such notification may consist in the mailing of a list of such suspension and revocations or it may be by the publication in two or more alcoholic beverage trade journals having a state-wide circulation among such licensees. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

IMPORTS.

SEC. 49. Alcoholic beverages shall be brought into this State from without this State for delivery or use within the State only when such alcoholic beverages are consigned to a licensed importer and only when consigned to the premises of such licensed importer or to the premises of a public warehouse licensed under this act. Alcoholic beverages which are consigned to a destination within this State shall be presumed to be for delivery or use within this State. Alcoholic beverages imported into this State contrary to the provisions hereof shall be seized by the board. Every person violating the provisions of this section shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted all but the last sentence. The section formerly provided for the forfeiture of alcoholic beverages consigned to a person who was not a licensed importer. Other omitted portions of the section with amendments thereto are contained in the first two sentences of section 49.2. See note following section 49.2.

RESTRICTIONS ON DELIVERIES BY COMMON CARRIERS.

SEC. 49.2. Common or private carriers transporting alcoholic beverages into this State from without the State for delivery or use within this State must obtain the receipt of the licensed importer, distilled spirits manufacturer or distilled spirits manufacturer's agent for the alcoholic beverages so transported and delivered and, if the consignee refuses to give such receipt and show his license to the carrier, the carrier shall be relieved of all responsibility for delivering said alcoholic beverages. Where the consignee is not a licensed importer, distilled spirits manufacturer or distilled spirits manufacturer's agent

or where the consignee refuses to give his receipt and show his license the carrier shall immediately notify the board at Sacramento giving full details as to the character of shipment, point of origin, destination and address of the consignor and consignee, and within ten days such alcoholic beverages shall be delivered to the board and shall be forfeited to the State of California. If any alcoholic beverages seized under the preceding section or forfeited under this section are sold by or under the direction of the board the common carrier's unpaid freight and storage charges accruing on the shipments of such alcoholic beverages shall be satisfied out of the proceeds of any sale made by the State after deducting the cost of such sale and any excise taxes accruing thereon. Every person violating the prvoisions of this section shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 49. The first two sentences of this section were formerly contained in section 49 except for the following amendments to those sentences: The references to distilled spirits manufacturer or distilled spirits manufacturer's agent were added; "from without the State for delivery or use within this State" was added; and "or where the consignee refuses to give his receipt and show his license" was added.

POSTAL SHIPMENTS.

SEC. 49.4. Postal authorities may refuse delivery of any shipment of alcoholic beverages originating outside this State. Postal authorities may turn alcoholic beverages over to the board. The alcoholic beverage when received shall be forfeited to the State. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly section 50 which section provided also for a sale at public auction and for making the violation of the section a misdemeanor. The word "alcoholic" was inserted in the second sentence.

UNLAWFUL POSSESSION ON LICENSED PREMISES; SEIZURE.

SEC. 50. It shall be unlawful of any person or licensee to have upon any premises for which a license has been issued any alcoholic beverages other than the alcoholic beverage which the licensee is authorized to sell at such premises under his license. It shall be presumed that all alcoholic beverages found or located upon premises for which licenses have been issued belong to the person or persons to whom such licenses were issued. Every person violating the provisions of this section shall be guilty of a misdemeanor. The board may seize any alcoholic beverages found in violation of this section. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. See note following section 49.4. Stats. 1937, ch. 758, omitted all the former provisions of this section. The section contains substantially the same provisions of the first four sentences of the former section 51 except that the provision relating to summary destruction or sale at public auction of alcoholic beverages seized under the section was omitted.

POWER OF SEIZURE.

SEC. 51. The board shall also have the power to seize the following alcoholic beverages:

1. Alcoholic beverages manufactured in this State by any person other than a licensed manufacturer, regardless of where found;

2. Beer and wine upon the sale of which the excise tax imposed by this act has not been paid, regardless of where found;

3. Distilled spirits except (a) distilled spirits located upon premises for which licenses authorizing the sale of such distilled spirits have been issued; (b) distilled spirits consigned to and in the course of transportation to a licensee holding licenses authorizing the sale of such distilled spirits or for delivery without this State; (c) distilled spirits the containers of which bear the stamps herein required to be attached thereto; (d) alcohol or distilled spirits in the possession of a person who has lawfully purchased the same for use in the trades, professions or industries and not for beverage use. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. See note following section 50. Stats. 1937, ch. 758, omitted the provision for summary destruction or sale at public auction and the exemption from seizure of distilled spirits in the United States Government bonded warehouses, and added to clause (b) "or for delivery without this State" and added clause (d).

SEIZURE OF STILLS.

SEC. 51a. The board or its employees shall also have the power to seize any unlicensed still, whether in actual operation or not, and whether assembled for operation or dismantled, and also any parts of such stills, and also any materials or supplies capable of being used for the manufacture of alcoholic beverages which are found on or about the premises where any such unlicensed still or parts thereof are found. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

FORFEITURE.

SEC. 51b. When alcoholic beverages or any other property are seized under the provisions of this act such alcoholic beverages or other property shall be forfeited to the State and all such forfeitures are hereby declared to be statutory forfeitures. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

DESTRUCTION FOLLOWING SEIZURE.

SEC. 51c. When alcoholic beverages or other property are seized for forfeiture or forfeited under this act they may be disposed of by the board, its officers or employees by summary destruction when such alcoholic beverages are unfit for human consumption or when such alcoholic beverages or other property is incapable of lawful use or incapable of lawful sale by the persons from whom seized. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

DISPOSITION OF FORFEITED ALCOHOLIC BEVERAGES OR PROPERTY.

SEC. 51d. When alcoholic beverages or other property are seized or forfeited under this act and such alcoholic beverages or other property are not disposed of under section 51c then such alcoholic beverages or other property shall be subjected to a forfeiture proceeding in the superior court as in this act provided and upon a judgment in favor of the forfeiture the alcoholic beverages or other property shall be ordered turned over to the State Department of Finance for disposition as follows: (1) delivery to the State Board of Equalization for use in the needs of said board as may be requested by said board, (2) delivery to any other State department, board, commission, officer, hospital or institution, (3) sale at public auction, and when alcoholic beverages are sold at public auction they shall be sold only to a licensee or licensees authorized to sell such alcoholic beverages. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

SEIZURE RECORDS.

SEC. 51e. When alcoholic beverages or other property are seized under this act a record of the seizure and disposition shall be kept by the board. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

UNLAWFUL DISPOSITION OF SEIZURES.

SEC. 51f. Any member of the board, or officer, employee or agent of the board who disposes of any alcoholic beverages or other property, seized under any section of this act, in any manner other than as directed by order of the court or the provisions of this act shall be liable to the State in a civil action and shall be guilty of a felony. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

UNLAWFUL USE OF VEHICLES; FORFEITURE OF VEHICLES.

SEC. 51g. It shall be unlawful for any person to use any automobile or other vehicle to conceal, convey, carry, or transport any alcoholic beverages which are subject to seizure under the provisions of this act; except that the provision of this section shall not apply to any person who is the holder of an industrial alcohol dealer's license or who has purchased distilled spirits from the holder of an industrial alcohol dealer's license and who uses an automobile or other vehicle to transport distilled spirits for use in the trades, professions or industries. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Any automobile or other vehicle so used to conceal, convey, carry or transport alcoholic beverages in violation of this section shall be forfeited to the State of California. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

FORFEITURE PROCEDURE.

SEC. 52. (a) Any peace officer of this State upon seizing any alcoholic beverages or other property, not subject to summary destruction as provided in section 51c, shall hold the same as evidence until a forfeiture has been declared or a release ordered as provided in this section. All forfeitures under this act are hereby declared to be statutory forfeitures.

(b) Notice of the seizure and of the intended forfeiture proceeding shall be filed with the county clerk and shall be served on all persons, firms or corporations having any right, title or interest in the alcoholic beverages or other property seized; and when the owner or owners are unknown or can not be found then notice of the seizure and intended forfeiture proceedings shall be made upon such owners by one publication in a newspaper of general circulation in the county where such seizure was made.

(c) Within twenty days after service of the notice of seizure and intended forfeiture proceedings, or within twenty days after the date of publication, the owner or owners of the alcoholic beverages or other property so seized may file a verified answer to the fact of the alleged unlawful use of the alcoholic beverages or other property; provided, however, that the claimant of any right, title or interest in said alcoholic beverages or other property so seized may make a verified answer to establish his claim as provided in subdivision (f) of this section. No extensions of time shall be granted for the purpose of making the verified answer above required.

(d) If at the end of twenty days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of unlawful use and shall, upon proof thereof, order the alcoholic beverages or other property forfeited to the State of California.

(e) If a verified answer has been filed, then the forfeiture proceeding may be set for hearing on a day within thirty days therefrom, and notice of this proceeding shall be given to the owner or owners filing verified answers.

(f) At the time set for the hearing any of the owners who have verified answers on file may show by competent evidence that the alcoholic beverages or other property were not in fact used contrary to the provisions of this act. The claimant of any right, title or interest in said alcoholic beverages or other property under a lien, mortgage or conditional sales contract which is officially of record may prove that such lien, mortgage or conditional sales contract is bona fide and was created after a reasonable investigation of the moral responsibility, character and reputation of the lienor, mortgagor or vendee and without any knowledge that such alcoholic beverages or other property was being, or was to be, used contrary to the provisions of this act.

(g) In the event of such proof, the court shall order said alcoholic beverages or other property released to such lienholder, mortgagee or vendor if the amount due to such person shall be equal to, or in excess of, the value of the alcoholic beverages or other property. If the amount due to such person shall be less than the value of said alcoholic beverages or other property then such alcoholic beverages or other property shall be sold at public auction by the board and the remainder of the proceeds of such sale, after payment of the balance due on the purchase price, mortgage, or lien, shall be deposited in the State treasury.

Should the fact be determined that the alcoholic beverages or other property were not used contrary to the provisions of this act, the court shall order the alcoholic beverages or other property released to the owner or owners thereof.

(h) In any case the State Department of Finance shall have the right, within thirty days after judgment, to pay the balance due to such bona fide or innocent purchaser, lienholder, mortgagee or vendor and to purchase the alcoholic beverages or other property for the State.

(i) Nothing contained herein shall apply to common carriers or to an employee acting within the scope of his employment under this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted the former provisions of the section and added the present provisions of the section. Section 53 contains the former provisions of this section.

TAX EVASION UNLAWFUL.

SEC. 52½. Any person who wilfully evades or attempts in any manner to evade or defeat the payment of the excise tax imposed by this act is guilty of a felony. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

RESTRICTIONS ON SALES IN PUBLIC BARROOMS.

SEC. 53. Every person who sells, serves or otherwise disposes of any alcoholic beverage, except beer which may be so sold, served or disposed of, over or at any public bar or in any public barroom, for consumption on the premises, shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted all the former provisions of this section and added the provisions of the former section 52. The section formerly made it a misdemeanor for any person to fail to file reports required to be filed by the act or to make a false statement or conceal any material fact in any application, record, report, affidavit or claim provided for in the act except where such act was declared to be a felony by any other law of this State.

BEER LABELS AND CONTAINERS.

SEC. 53.5. All beer sold in this State must have a label affixed to the package or container thereof, upon which shall appear the true and correct name and address of the manufacturer of the beer, and also

the true and correct name of the bottler of such beer if other than the manufacturer. No manufacturer, importer or wholesaler of beer shall use a container or carton as a package or container of a beer other than such beer as is manufactured by the manufacturer whose name or brand of beer appears upon any such container or carton, and no such licensee shall use as a package or container of a beer a container or carton which bears the name of a manufacturer of beer or the brand of any beer other than those of the manufacturer of the beer contained in such container or carton. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

RESTRICTION ON SIZE OF WINE AND BEER CONTAINERS; BRAND NAMES OF BEER.

SEC. 53.6. On and after December 31, 1937, wine shall not be packaged or bottled in any flask containers of less than one-half gallon which are of the same or similar type used for the packaging or bottling of distilled spirits. Every manufacturer or bottler of beer in California or elsewhere whose beer is sold within the State of California shall file with the board the brand name or names under which such manufacturer or bottler sells or labels his draft beer sold in California, and each such manufacturer or bottler shall be and is allowed two brand names which such manufacturer or bottler shall designate as his main or principal brands of draft beer, and any other brand name or names under which such manufacturer or bottler sells or labels or packages his draft beer shall be known as secondary labels. Whenever a draft beer is given, sold or dispensed by an "on-sale" licensee under any such secondary brand name or label the tap sign or draft beer signs required by section 55 of this act to be displayed shall also contain the name and address of the manufacturer or bottler of the draft beer so given, sold or dispensed by such "on-sale" licensee, which name and address must be displayed in the same manner and with the same effect and purpose as the brand name. No retailer shall dispense any draft beer upon which the proper tap sign or draft beer sign is not displayed or the manufacturer or bottler of which has not complied with the terms of this section. No draft beer shall be given, sold or dispensed under a name or brand other than a name or brand filed with the board pursuant to this section and under which such draft beer is sold, labeled or packaged by a manufacturer or bottler. No beer intended for sale in the State of California, except for export, shall be contained in bottles, jugs or cans having a capacity of more than 64 ounces, nor shall beer in bottles, jugs or cans of a capacity in excess of 64 ounces be sold to or purchased by an on-sale or off-sale licensee in the State of California, provided that nothing in this paragraph shall be construed to prohibit the possession or sale by a qualified licensee of draft or unpasteurized beer from or in metal or wood kegs of a capacity of three and one-half (3½) gallons or more. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

RESTRICTIONS ON OWNING INTEREST IN RETAIL PREMISES.

SEC. 54. No manufacturer, manufacturer's agent, rectifier, distiller, bottler, importer or wholesaler or any officer, director or agent of any such person shall

(a) Hold the ownership, directly or indirectly, of any interest in any "on-sale" license; except that no provision of this section 54 shall be held to apply to a manufacturer of beer with respect to one location only and the on-sale licenses, fixtures and appurtenances necessary to the conduct of such location and the sale of alcoholic beverages thereon when such location is in and upon and to be operated for the duration of the Golden Gate International Exposition to be held in the San Francisco Bay region in 1939, and the manufacturer of beer has in writing notified the board of such single location as to which such manufacturer elects the provisions of this section shall not apply.

(b) Furnish, give or lend any money or other thing of value, directly or indirectly, to, nor guarantee the repayment of any loan or the fulfillment of any financial obligation of any person engaged in operating, owning or maintaining any "on-sale" premises where alcoholic beverages are sold for consumption on such premises;

(c) Furnish, give, rent, lend or sell, directly or indirectly, any equipment, fixtures or supplies, other than alcoholic beverage directly or indirectly to any person engaged in operating, owning or maintaining any "on-sale" premises where alcoholic beverages are sold for consumption on such premises, provided that this subdivision shall apply only to manufacturers, bottlers, importers or wholesalers of products of the brewing industry;

(d) Furnish, give, lend or rent directly or indirectly to any person any decorations, paintings or signs other than signs for interior use of not to exceed in area six hundred thirty square inches for use in or about or in connection with any premises where alcoholic beverages are sold for consumption on such premises, or pay money or any thing of value for the privilege of placing or painting a sign or advertisement, or window display on or in any premises selling alcoholic beverages at retail;

(e) Own any interest, directly or indirectly, in the business, furniture, fixtures, signs, except signs for interior use mentioned in subdivision (d) herein, refrigeration equipment or lease in or of any premises operated or maintained under any "on-sale" license for the sale of alcoholic beverages for consumption on the premises where sold; or own any interest directly or indirectly in realty hereafter acquired upon which such "on-sale" premises are maintained unless the holding of such interest is permitted in accordance with regulations of the board;

(f) Hold the ownership, directly or indirectly, of any off-sale distilled spirits license for any premises other than such licensee's licensed wholesale premises, nor own or control any interest directly or indirectly by stock ownership, interlocking directors, trusteeship or mortgage of the premises or fixtures covered by an off-sale distilled spirits license other than the premises of such manufacturer, rectifier, distiller, bottler, importer, or wholesaler; except that any stockholder, member, officer or director of a corporation or association, which cor-

poration or association held a wholesaler's distilled spirits license which was in force on May 1, 1937, or any renewal thereof under this act, may hold or own off-sale distilled spirits licenses, or interests therein, for premises other than the premises for which such wholesaler's distilled spirits license was issued. For the purpose of this subdivision the issuance of a new wholesaler's license upon the expiration of an existing wholesaler's license shall be deemed a renewal thereof.

The provisions of this subdivision shall not apply to any off-sale distilled spirits license held or to be held by any wholesaler when such off-sale distilled spirits license is necessary to enable said wholesaler to operate or continue to operate any concession or leased retail stand in any hotel, which concession or stand is required to be operated by such wholesaler pursuant to any lease or contract entered into prior to the effective date of this subdivision and such retail off-sale distilled spirits licenses may be issued to any such wholesaler for such premises and purposes.

The provisions of this subdivision shall not apply for a period of one year after the effective date of this section to any ownership or control, stock ownership, mortgage or direct or indirect interest in any off-sale distilled spirits license issued in the name of another person or the premises covered by said license by any distilled spirits manufacturer, rectifier, or wholesaler, when such ownership interest, control, stock ownership or mortgage existed prior to May 1, 1937, and also provided that such ownership, control or interest shall be disclosed to the board, in accordance with regulations adopted in connection therewith, within a period of sixty days after the effective date of this section and provided further that nothing in this subdivision shall prohibit any holder of a distilled spirits manufacturer's, manufacturer's agent's, rectifier's or wholesaler's license or any officer, employee or representative of such manufacturer, rectifier or wholesaler from acting as a trustee for any off-sale distilled spirits licensee in any bankruptcy or other proceedings for the benefit of the creditors of such off-sale distilled spirits licensee.

(g) Directly or indirectly, deliver the possession of any alcoholic beverages to any "on-" or "off-sale" licensee under an agreement of consignment whereby title to such alcoholic beverages is retained by the seller or whereby such licensee receiving such alcoholic beverages has the right at any time prior to sale to relinquish possession to or return them to the original seller;

(h) Directly or indirectly, give any licensee or any person any alcoholic beverages as free goods as a part of any sale or transaction involving alcoholic beverages.

(i) Give secret rebates or make any secret concessions to any licensee or the employees or agents of said license and no licensee shall request or knowingly accept from another licensee secret rebates or secret concessions; or give or furnish, directly or indirectly, to any employee of any holder of a retail on-sale or off-sale license only anything of value for the purpose or with the intent to solicit, acquire or obtain the help or assistance of any such employee to encourage or promote either the purchase or the sale of the alcoholic beverage sold or manufactured by the licensee giving or furnishing any such thing of value, and any such employee who shall accept or acquire any such

thing of value contrary to the provisions of this subdivision shall be guilty of a misdemeanor.

(j) Wilfully or knowingly discriminate, in the same trading area, either directly or indirectly in the price of any brand of distilled spirits sold to different retail licensees purchasing under like terms and conditions.

(k) Pay, credit, or compensate a retailer or retailers for advertising, display or distribution service in connection with the advertising and sale of distilled spirits.

(l) Directly or indirectly, hold the ownership or any interest by stock ownership or otherwise, in any firm, corporation, partnership or business, furnishing, supplying or dealing in any office, store or restaurant furnishings or equipment, other than signs for interior use or supplies authorized to be given under this act to any person engaged in operating, owning or maintaining any on-sale premises, provided that this subdivision shall apply only to manufacturers, bottlers, importers and wholesalers of products of the brewing industry.

Any person violating any provision of this section shall be guilty of a misdemeanor and any holder of any retail "on-sale" or retail "off-sale" license who shall solicit the violation of the provisions of this section or accept or permit to be accepted on his behalf and with his consent any of the prohibited matters, articles or acts herein designated shall be guilty of a misdemeanor; provided, however, that the provisions of this section shall not apply to any equipment, fixtures or supplies furnished, given, lent or sold prior to the passage of this act so long as such equipment, fixtures or supplies remain in the premises in which installed prior to such time, nor shall the provisions of this act apply to carbonic acid gas or tapping accessories furnished to any one "on-sale" licensee to a limit of not exceeding a value of $5 per tap in any one calendar year. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added paragraphs (f), (g), (h), (i), (j), (k), (l), "manufacturer's agent," the portion of paragraph (a) referring to the Golden Gate International Exposition in 1939, and "furnished to any one 'on-sale' licensee to a limit of" in the last paragraph.

RESTRICTIONS ON OWNING INTEREST IN MANUFACTURER'S, RECTIFIER'S, IMPORTER'S OR WHOLESALER'S LICENSE.

SEC. 54.5. No on-sale licensee or any officer, director, employee or agent of such licensee shall hold any ownership or interest, directly or indirectly, in any manufacturer's, rectifier's, importer's, or wholesaler's license issued under this act or the business conducted under such license or the property used in such business. *(Statutes 1937, ch. 758; operative July 1, 1937.)*.

History.—Added by Stats. 1937, ch. 758.

RESTRICTIONS ON USE OF SIGNS; SPIGOT MARKERS; ALCOHOLIC CONTENT OF BEER.

SEC. 55. No sign or signs, which in whole or in part advertise any alcoholic beverage, and exceed in area seven hundred twenty square inches and no sign using the words "bar," "barroom," "saloon," "cocktail bar" or "lounge," or words of like or similar import, shall be maintained, erected, used or placed upon or adjacent to the outside of any building and in connection with any premises therein licensed to sell alcoholic beverages at retail for consumption on such premises.

Signs or other advertising matter used in connection with the licensed premises of any retailer of alcoholic beverages shall not be of any obnoxious, gaudy, blatant or offensive nature and shall in no manner contrary to the rules or regulations of said board obstruct the view of the interior of the premises from the street.

Each and every holder of an "on-sale" retail license who shall give, sell or otherwise dispense any draught beer, shall, upon the faucet, spigot or outlet where from such beer is drawn, attach and keep posted a clear and legible notice, placard or marker which shall in the English language indicate and declare the name or brand adopted by the manufacturer of such draught beer so given, sold or dispensed by such licensee, and which notice, placard or marker shall be so situated as to be clearly legible for a distance of at least ten (10) feet from such spigot, faucet or outlet to a person with normal vision, and such notice, sign or placard shall at all times be so situated as to be so clearly legible from the place where such "on-sale" licensee serves any customer or consumer of such beer, and provided further that if such faucet, spigot or other drawing device is in a location not within the room of the place of service and consumption of such beer, then, and in that event there shall also be kept posted a similar notice, placard or marker in the place of service and consumption of such beer which shall truthfully state and indicate only the kinds and brands of draught beer actually on sale in the premises of the "on-sale" licensee.

Any person who shall violate any of the provisions of this section, or who shall substitute another or different brand of draught beer from that indicated by any of the notices, placards or markers hereinabove provided for; or who shall substitute one brand of beer for another, or misrepresent the brand or kind of beer served to a consumer, shall be guilty of a misdemeanor for such violation or noncompliance. Any person who sells or otherwise disposes of, except for export, any draught beer containing more than three and two-tenths per cent of alcohol by weight and any person who sells or otherwise disposes of, except for export, any bottled beer containing more than four per cent of alcohol by weight, shall be guilty of a misdemeanor; provided, that this limitation shall not apply to the sale of ale, porter, brown and stout in bottles bearing labels properly describing the contents under any licenses, other than on sale beer licenses, issued under this act or the State Liquor Control Act. *(Original section; Statutes 1935, p. 1123.)*

RESTRICTIONS ON ADVERTISING.

SEC. 55.2. The use in any advertisement of distilled spirits of any subject matter, language or slogan addressed to and intended to encourage minors or immature persons to drink any such distilled spirits is hereby prohibited. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

FAIR TRADE CONTRACTS.

SEC. 55.5. (a) No contract relating to the sale or resale of any alcoholic beverage which bears, or the label or content of which bears, the trade-mark, brand or name of the producer or owner of such alcoholic beverage and which is in fair and open competition with alcoholic beverages of the same general class produced by others shall be deemed in violation of any law of this State by reason of any of the following provisions which may be contained in such contract:

(1) That the buyer will not resell such alcoholic beverage except at the price stipulated by the vendor;

(2) That the producer or vendee of the alcoholic beverage require, upon the sale thereof to another, that such purchaser agree that he will not, in turn, resell except at the price stipulated by such producer or vendee.

(b) Such provisions in any contract shall be deemed to contain or imply conditions that such alcoholic beverage may be resold without reference to such agreement in the following cases:

(1) In closing out the owner's stock for the purpose of discontinuing delivery of any such alcoholic beverage; provided, however, that at the place of any such sale and upon the goods sold and in any advertisement in connection therewith public notice is given of the character of such sale as a "close out sale"; provided further, that such alcoholic beverage is first offered to the manufacturer or vendor thereof at the original invoice price at least ten days before it is offered for sale to the public;

(2) When the alcoholic beverage or container is damaged or deteriorated in quality, and notice is given to the public thereof at the place of any such sale and upon the goods sold and in any advertisement in connection therewith;

(3) By any officer acting under the orders of any court.

(c) Wilfully and knowingly advertising, offering for sale or selling any alcoholic beverage at less than the price stipulated in any contract entered into pursuant to the provisions of this section, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

(d) This section shall not apply to any contract or agreement between producers or between wholesalers or between retailers as to sale or resale prices. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

GIFTS OR PREMIUMS UNLAWFUL.

SEC. 55.7. No licensee shall, directly or indirectly, give any premium, gift, or free goods in connection with the sale of any alcoholic beverage. Any person violating the provisions of this section shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

REGULATION OF CREDIT TERMS.

SEC. 55.8. The board may adopt rules and regulations specifying the maximum credit terms which shall be extended to any on-sale or off-sale licensee after notices have been mailed to all manufacturers, rectifiers and wholesalers at least 30 days prior to the adoption of such rules and regulations. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

EMPLOYMENT OF MINORS UNLAWFUL.

SEC. 56. Every person who employs or uses the services of minors in or on that portion of any premises which are used for the sale and service of alcoholic beverages for consumption on the premises shall be guilty of a misdemeanor. *(Original section; Statutes 1935, p. 1123.)*

EMPLOYMENT OF FEMALE BARTENDERS UNLAWFUL.

SEC. 56.4. Every person who uses the services of a female in mixing alcoholic beverages containing distilled spirits, on any premises used for the sale of alcoholic beverages for consumption on the premises, or any female who renders such services on such premises, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than three months or by both such fine and imprisonment.

The provisions of this section shall not apply to the mixing of alcoholic beverages containing distilled spirits by any on-sale licensee nor to the mixing of such beverages by the wife of any licensee on the premises for which her husband holds an on-sale license. *(Statutes 1937, ch. 681; in effect August 27, 1937.)*

History.—Added by Stats. 1937, Ch. 681.

EMPLOYMENT OF HOSTESSES AND ENTERTAINERS ON PERCENTAGE BASIS UNLAWFUL.

SEC. 57. It shall be unlawful for any person to pay or agree to pay any hostess, waitress, entertainer or other person a percentage of the receipts from sales of alcoholic beverages solicited or made by such hostess, waitress, entertainer or other person a salary or remuneration the amount of which is in any way dependent upon the amount or number of sales of alcoholic beverages solicited or made by such hostess, waitress, entertainer or other person. Provided, that this section shall

not prohibit the holders of manufacturer's, rectifier's or wholesaler's licenses from employing and paying salesmen engaged in selling or soliciting sales for alcoholic beverages on a commission basis.

Every person who violates the provisions of this section shall be guilty of a misdemeanor. *(Original section; Statutes 1935, p. 1123.)*

DISORDERLY HOUSES UNLAWFUL.

SEC. 58. Every licensee or agent or employee of any licensee who keeps or permits to be used or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience or safety shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, substituted "licensee or agent or employee of any licensee" for "person" and added "in conjunction with a licensed premises."

SALES ON ELECTION DAY UNLAWFUL.

SEC. 59. Every on- or off-sale licensee who sells, gives away or furnishes any alcoholic beverage in any election district or precinct in any county in the State where an election is in progress, during the hours when by law the polls are required to be kept open for voting shall be guilty of a misdemeanor. *(Original section; Statutes 1935, p. 1123.)*

RETAIL SALES UNLAWFUL DURING CERTAIN HOURS.

SEC. 59.5. Any on- or off-sale licensee who sells, gives, or delivers to any person any alcoholic beverage between the hours of two o'clock a.m. and six o'clock a.m. of the same day, is guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

RESTRICTIONS AS TO TIME OF MAKING WHOLESALE DELIVERIES.

SEC. 60. Except as otherwise provided in this section, no person licensed as a manufacturer, distilled spirits manufacturer's agent, rectifier or wholesaler of any alcoholic beverage shall deliver or cause to be delivered any alcoholic beverage to or for any person holding an on-sale or off-sale license except between the hours of six a.m. and eight p.m. of any day other than Sunday. No delivery of any distilled spirits shall be made nor caused to be made by any licensee in any precinct where an election is in progress during the hours when by law the polls are required by law to be kept open for voting. Beer and wine may be delivered at the platform of the manufacturing or distrubuting plant at any time. Nothing herein contained shall be construed to prohibit the transportation or the carriage and delivery in transit at any time of beer or wine between the premises of a manu-

facturer, wholesaler, distiller, importer or any of them. Every person violating the provisions of this section shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added "distilled spirits manufacturer's agent" and omitted "import"; substituted "alcoholic beverage" for "beer" in the first sentence and "Beer and wine" for "Alcoholic beverages" in the third sentence; and added the provision relating to transportation of beer or wine between the premises of a manufacturer, wholesaler, distiller or importer.

SALES TO MINORS UNLAWFUL.

SEC. 61. (a) Every person who sells, furnishes, gives, or causes to be sold, furnished or given away any alcoholic beverage to any person under the age of twenty-one years shall be guilty of a misdemeanor.

(b) Any minor who purchases any alcoholic beverage or any minor who consumes any alcoholic beverage in any on-sale premises is guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats 1937, ch 758, omitted a provision excepting parents or guardians and added paragraph (b).

SALES TO HABITUAL DRUNKARD UNLAWFUL.

SEC. 62. Every person who sells, furnishes, gives or causes to be sold, furnished or given away, any alcoholic beverage to any habitual or common drunkard, or to any obviously intoxicated person shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added "or to any obviously intoxicated person."

RESTRICTIONS ON BRINGING ALCOHOLIC BEVERAGE INTO JAILS, ETC.

SEC. 63. Every person, not authorized by law, who brings into any State prison, town or county jail, or city and county jail, or reformatory in this State or within the grounds belonging to any such institution any alcoholic beverage of any kind whatsoever shall be guilty of a felony. *(Original section; Statutes 1935, p. 1123.)*

SALES ON PUBLIC SCHOOL GROUNDS UNLAWFUL.

SEC. 64. Every person who sells, gives or delivers to any other person any alcoholic beverage at any public schoolhouse or upon any portion of the grounds thereof shall be guilty of a misdemeanor. Any person convicted of a violation of this section shall, in addition to the penalty imposed for the misdemeanor, be barred from having or receiving any privilege of the use of public school property which is accorded by Chapter II of Part III of Division VI of the School Code of this State. *(Original section; Statutes 1935, p. 1123.)*

PUNISHMENT FOR MISDEMEANORS.

SEC. 65. Every person convicted for a violation of any of the provisions of this act for which another penalty or punishment is not specifically provided for herein, shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted "of a misdemeanor" following "convicted" and added "guilty of a misdemeanor and shall be", and omitted the second paragraph of the section as it formerly read. See note following section 65b.

PUNISHMENT FOR FELONY.

SEC. 65a. Every person convicted of a felony for a violation of any of the provisions of this act for which another punishment is not specifically provided for herein, shall be punished by a fine of not more than five thousand dollars or by imprisonment in the State penitentiary for not less than one year nor more than five years or by both such fine and imprisonment. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly section 66.

DISPOSITION OF FINES.

SEC. 65b. All fines and forfeitures of bail imposed for a violation of this act and collected in any court, except police courts, city justices' courts, city courts, and recorders' courts of cities or towns, must be paid to the county treasurer of the county in which the court is held; provided that all fines and forfeitures of bail collected in any police court, city justices' court, city court, or recorders' court, of any city or town that is maintained and the salaries of the officers thereof paid by the city shall be paid to the city treasurer of the city in which such court is located, excepting, however, all forfeitures of bail collected by the judge of any of said courts when sitting as a committing magistrate. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History—Added by Stats. 1937, ch. 758. This section formerly comprised the second paragraph of section 65. Stats. 1937, ch. 758, added the words "of bail."

SHIPMENTS IN TRANSIT THROUGH STATE.

SEC. 66. Where alcoholic beverages are brought into this State from without this State for delivery or use without this State such alcoholic beverages shall be exempt from the provisions of this act only while in continuous transit through this State; except that the board, to insure such continuous transit, may require affidavits of any person on forms prescribed by the board and may require any such shipments to be checked in and checked out at the boundaries of the State. Any person refusing to make such report or refusing to

check in or check out such alcoholic beverages shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted all the provisions of the former section which now comprise section 65a and substituted the provision of the section as it now reads.

DUTY OF LOCAL AUTHORITIES TO ENFORCE ACT.

SEC. 66.5. It is hereby made the duty of every peace officer and every district attorney in this State to enforce the provisions of this act, and to inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions hereof. Every such officer refusing or neglecting to do so is guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

ACT NOT APPLICABLE TO DENATURED ALCOHOL; TAX-FREE PRODUCTS.

SEC. 67. It is hereby declared that this act shall not apply to the manufacture, sale or use of completely denatured ethyl alcohol or special denatured ethyl alcohol, as these substances are defined in the various statutes and regulations of the United States government relating thereto.

Nothing in this act shall be deemed to prevent or restrict the use of tax-free ethyl alcohol under regulation of the Treasury Department of the United States government by any governmental agency, State or Federal, or any scientific university or college of learning or any laboratory for use exclusively in scientific research or to any hospital or sanitarium.

Nothing in this act shall be deemed to prevent or restrict the use of tax-free alcohol or of industrial alcohol or other distilled spirits or wine under regulation of the United States government in the manufacture of medicinal pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; of toilet products, of flavoring extracts, sirups, of food products, of scientific, chemical, or industrial products; provided such products are unfit for beverage use. *(Original section; Statutes 1935, p. 1123.)*

Industrial alcohol not taxable.—Ethyl alcohol to be used in the manufacture of nonbeverage products, is not subject to tax under the provisions of the act. (*Commercial Solvents Corporation* vs. *Riley et al* (1936), 92 C. D. 639.)

INDUSTRIAL ALCOHOL DEALER'S REPORTS; DIVERSION TO BEVERAGE USE UNLAWFUL.

SEC. 67.1. No tax under this act shall be imposed upon the sale of alcohol or distilled spirits by distilled spirits manufacturers, rectifiers, or industrial alcohol dealers for use in the trades, professions, or industries, but not for beverage use. Complete information concerning sales of distilled spirits for use in the trades, professions or industries by persons holding industrial alcohol dealers' licenses, distilled spirits manufacturers' licenses and brandy manufacturers'

licenses shall be reported to the board each month by such licensees on forms prescribed by the board.

Any person who shall divert or who shall conspire with others to divert for beverage use any alcohol or other distilled spirits sold tax free for use in the trades, professions or industries shall be guilty of a felony. *(Statutes 1937. ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

EXCISE TAX ON SALES TO COMMON CARRIERS.

SEC. 67.5. No tax under this act shall be imposed upon the sale of alcoholic beverages by a licensee in this State to a common carrier when such alcoholic beverages are to be used without this State; nor in such case need such common carrier procure a license under this act for purposes of purchasing such alcoholic beverages from a licensed manufacturer, rectifier, importer or wholesaler.

Whenever distilled spirits are sold by manufacturers, rectifiers, importers or wholesalers to common carriers engaged in interstate or foreign passenger service for use or sale by such carriers partly within the State and partly without the State on board boats or trains the tax imposed by section 24 of this act shall not be levied on the sales made by manufacturers, rectifiers, importers or wholesalers, nor shall the tax be collected in accordance with the provisions of sections 33 to 33c, but the excise tax on sales of distilled spirits in such cases shall be levied and collected as provided in this section.

An excise tax is hereby levied on sales of distilled spirits made by common carriers on board boats and trains in California at the same rates as set forth in section 24. On or before the first day of each month such common carriers shall render to the board a verified report of the sales of distilled spirits made by such common carriers on board trains and boats in California in the calendar month preceding the previous calendar month, in such detail and form as the board may prescribe, together with a payment sufficient to purchase a quantity of distilled spirits excise tax stamps representing the tax at the rates set forth in section 24 on such sales made in said month. Thereupon the board shall set aside distilled spirits excise tax stamps in an amount equivalent to the amount of such payment. Such stamps so set aside shall not be delivered to the common carrier, but subsequently the board or its employees shall destroy the same in the presence of a representative of the Department of Finance.

The board shall from time to time make examinations to determine the accuracy of the reports of sales submitted by common carriers. The board shall have the power and is hereby authorized to make such rules and regulations for the enforcement of the provisions of this section as it shall deem is necessary to adequately insure the collection of the excise tax. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

1933 LIQUOR CONTROL AND BEVERAGE TAX ACTS EFFECTIVE UNTIL JULY 1, 1935.

SEC. 68. The State Liquor Control Act, Chapter 658, Statutes of 1933, and Chapter 178, Statutes of 1933, shall remain in effect until July 1, 1935, after which date said acts shall no longer be of any force and effect; provided, that any taxes imposed pursuant to Chapter 178, Statutes of 1933, prior to said date shall remain fully collectible. *(Original section; Statutes 1935, p. 1123.)*

SCHEDULE OF LAWS REPEALED.

SEC. 69. The following acts and sections, together with all amendments thereof and all acts supplementary thereto, are repealed.

Year	Chapter	Page	Year	Chapter	Page
1855	188	240	1895	156	161
1858	232	193	1903	240	319
1860	223	186	1905	26	20
1871–72	188	231	1905	123	126
1873–74	13	12	1907	104	127
1873–74	27	27	1909	413	722
1873–74	198	297	1911	351	599
1873–74	300	434	1915	21	20
1873–74	345	509	1921	80	79
1875–76	473	691	1925	89	221
1880	83	80	1933	51	340
1889	241	352	1933	149	598
1891	87	91			

PENAL CODE SECTIONS.

63b 397b 680

POLITICAL CODE SECTIONS.

3381
3383

SCHOOL CODE SECTIONS.

3.80
3.81

(Original section; Statutes 1935, p. 1123.)

Section 172 of the Penal Code.—Section 172 of the Penal Code, prohibiting the sale of liquor within certain distances of institutions therein named, was not repealed either specifically or by implication by section 69 of the Alcoholic Beverage Control Act. *(In re Zadro* (1936), 86 C. A. D. 820.)

CONSTITUTIONALITY.

SEC. 70. If any section, subsection, clause, sentence or phrase of this act which is reasonably separable from the remaining portion of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The Legislature hereby declares that it would have passed the remaining portions of this act irrespective of the fact that any such section, subsection, clause, sentence or phrase of this act be declared unconstitutional. *(Original section; Statutes 1935, p. 1123.)*

ACT EFFECTIVE IMMEDIATELY.

SEC. 71. This act, inasmuch as it provides for tax levies for the usual current expenses of the State, shall, under the provisions of section 1 of Article IV of the Constitution, take effect immediately. *(Original section; Statutes 1935, p. 1123.)*

NOTE.—The last section of Stats. 1937, ch. 758, provides as follows:

"SEC. 102. This act, inasmuch as it provides for a tax levy for the usual current expenses of the State, shall, under the provisions of section 1 of Article IV of the Constitution, take effect immediately; provided, however, that the provisions of the Alcoholic Beverage Control Act as they existed on January 1, 1937, are hereby continued in force until July 1, 1937, and that the provisions hereof shall become operative on July 1, 1937."

CASES ARISING UNDER PROVISIONS OF LIQUOR CONTROL AND BEVERAGE TAX ACTS OF 1933.*

The definition of wine as contained in the State Liquor Control Act (Stats. 1933, p. 1697) should be considered in construing beverage tax acts passed earlier in the same year (Stats. 1933, pp. 340 and 626). Thus a person who operated a winery, and manufactured and sold wine within the meaning of the control act, was obliged to pay the excise tax of two cents per gallon imposed by the taxing statutes, notwithstanding the fact that such wine exceeded the alcoholic content specified in those statutes. He was not entitled to engage in business merely by paying the fee of $10 imposed upon a winery by the provisions of the State Liquor Control Act. (*Lucchesi* vs. *State Board of Equalization*, 137 Cal. App. 478.)

A license issued by the State Board of Equalization to sell intoxicating liquor within a mile and a half of Stanford University was annulled by the Supreme Court inasmuch as section 172a of the Penal Code makes such sales a misdemeanor. The court determined that the area within which liquor sales are to be prohibited shall be measured by a straight and direct line from the campus limits and not from university buildings within such limits. (*Leland Stanford Junior University* vs. *State Board of Equalization*, 1 Cal. (2d) 784).

No public offense was stated in a complaint for violation of the State Liquor Control Act, alleging that a sale of intoxicating liquor was unlawfully made, but omitting to allege that such sale was of a "broken package" or "to be consumed on the premises," where the sale was made. In the absence of such averments, the transaction was as consistent with innocence as with guilt. (*In re Ferrari*, 3 Cal. App. (2d) 53.)

Where the State Board of Equalization, upon an independent investigation, is in possession of facts sufficient to support the conclusion that a licensee has been guilty of acts or omissions which are grounds for revocation or suspension of the license, it may make an appropriate order without notice or hearing. There is no inherent right in a citizen to sell intoxicants. A license to do so is but a permit to do what would otherwise be unlawful, and consequently, a statute authorizing its revocation does not violate the due process clause, and it may be revoked without notice or hearing without invading any constitutional guarantees. (*State Board of Equalization* vs. *Superior Court of San Francisco*, 5 Cal. App. (2d) 347.)

BOARD HAS BROAD LICENSING POWERS.

Section 22 of Article XX of the Constitution (prior to its amendment November 6, 1934) provided no limitation on the power given to the Legislature to regulate the sale of wines and beer when meals are furnished. A reasonable construction of the acts of the Legislature and the rules and regulations of the State Board of Equalization made in pursuance thereof, gives the board the power to determine the suitability and fitness of the premises, including the nature of the location, and to

* Cases are cited for any value they may have in interpreting the Alcoholic Beverage Control Act.

consider questions affecting the peace, safety and good order of the surroundings where the sale is to be made. (*Parente* vs. *State Board of Equalization* (1934), 1 Cal. App. (2d) 238.)

"PUBLIC DRINKING PLACE" DEFINED.

A dining room of a hotel would become a "public drinking place" within the meaning of section 22 of Article XX of the Constitution (prior to amendment on November 6, 1934) and the State Liquor Control Act (Chapter 658, Statutes of 1933) if liquor other than beer and wine should be consumed therein. This would be true whether such liquor was brought into the dining room by a patron of the hotel, or was purchased by the hotel employees for the patron at a retail liquor store and served to him in the dining room. (*Sandelin* vs. *Collins* (1934), 1 Cal. (2d) 147.) In this same case, however, the court held that a sandwich served to a patron along with wine or beer could constitute a meal within the meaning of the Constitution and statute, whether or not such sandwich is consumed.

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EXHIBIT "B".

Section 1 of the Act of June 11, 1906 (34 Statutes 831).

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the recession and regranting unto the United States by the State of California of the cleft or gorge in the granite peak of the Sierra Nevada Mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced River, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort, and recreation by the Act of Congress entitled "An Act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the Mariposa Big Tree Grove," approved June thirtieth, eighteen hundred and sixty-four (Thirteenth Statutes, page three hundred and twenty-five), as well as the tracts embracing what is known as the "Mariposa Big Tree Grove," likewise granted unto the State of California by the aforesaid Act of Congress, is hereby ratified and accepted, and the tracts of lands embracing the Yosemite Valley and the Mariposa Big Tree Grove, as described in the Act of Congress approved June thirtieth, eighteen hundred and sixty-four, together with that part of fractional sections five and six, township five south, range twenty-two east, Mount Diablo meridian, California, lying south of the South Fork of Merced River and almost wholly between the Mariposa Big Tree Grove and the present south boundary of the Yosemite National Park, be, and the same are hereby, reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States and set apart as reserved forest lands, subject to all the limitations, conditions, and provisions of the Act of Congress approved October first, eighteen hundred and ninety, entitled "An Act to set apart certain tracts of land in the State of California as forest reservations," as well as the limitations, conditions, and provisions of the Act of Congress approved February seventh, nineteen hundred and five, entitled "An Act to exclude from the Yosemite National Park, California, cer-

tain lands therein described, and to attach and include the said lands in the Sierra Forest Reserve," and shall hereafter form a part of the Yosemite National Park.

EXHIBIT "C".

Section 1 of the Act of June 2, 1920 (41 Statutes 731).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the Legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within the Yosemite National Park, Sequoia National Park, and General Grant National Park, respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving however, to the said State of California the right to serve civil or criminal process within the limits of the aforesaid parks or either of them in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said parks; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situated. All the laws applicable to places under sole and exclusive jurisdiction of the United States shall have force and effect in said parks or either of them. All fugitives from justice taking refuge in said parks, or either of them, shall be subject to the same laws as refugees from justice found in the State of California.

EXHIBIT "D".

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

In Equity. No. 4165.

YOSEMITE PARK AND CURRY CO., a Corporation, *Plaintiff*,

v.

R. E. COLLINS et al. (State Board of Equalization of the State of California), *Defendants*.

Opinion.

Before Wilbur, Circuit Judge, and St. Sure and Roche, District Judges.

ROCHE, *District Judge:*

The question in this case deals with the applicability of the "Alcoholic Beverage Control Act of the State of California"[1] in all its taxing, licensing and policing provisions, to the Yosemite National Park located within the territorial limits of California.

The answer depends upon the respective jurisdictions of the State and the United States over the Park, and this in turn revolves around the methods by which, and the extent to which, the federal government may acquire jurisdiction of lands ceded to it by states for national park purposes. The Supreme Court in *Arlington* v. *Fant*, 278 U. S. 439, 454, characterized the question as novel, saying:

> "This issue may in the future become a subject of constitutional controversy, because some twenty or more parks have been created by Congress, in a number of which exclusive jurisdiction over the land has been conferred by act of cession of the State. We do not find it necessary, however, now to examine this question."

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[1] 1935 Cal. Stats. Ch. 330.

Briefly, the Beverage Control Act is a complete liquor regulation measure for California.[1] It provides for various licensing fees of importers, retailers and wholesalers. It has a schedule of excise taxes applicable to the sale of different types of liquors and wines and beers. It has definite provisions for the areas within which liquor may be sold. It gives state officers the right to prescribe the accounting and bookkeeping systems which dealers in liquors must use. It enables the State Board of Equalization, which administers the Act, to require liquor dealers to obtain the endorsement of a certain number of property owners in the area where the dealers are to be licensed, and to furnish bond for security of tax collection. It has also many other features which make it extremely comprehensive and which give the State Board of Equalization complete regulatory power.

Plaintiff, the Yosemite Park and Curry Company, is seeking to enjoin the State Board of Equalization and the State Attorney General from enforcing the Beverage Control Act within the Park. Plaintiff is engaged in the operation of hotels, camps, stores, transportation facilities, utilities and other businesses within the Park. There is a contract between the plaintiff and the Secretary of the Interior leasing portions of the Park to plaintiff for a twenty year term. The intent of the contract is to carry out the Congressional desire to make the Park a resort and playground for the benefit of the public (Contract Art. VI(d).) The contract places upon plaintiff the duty of furnishing the aforementioned facilities for the accommodation of visitors in the Park. A part of such duty is the sale of liquors, beers and wines to Park visitors. It is in respect to these alcoholic beverages that the State threatens to take action under its Beverage Control Act. The prices which plaintiff can charge can be established only with the approval of the Secretary of the Interior (Contract Art. VI(e).) Plaintiff is limited to an annual six percent cumulative return upon its investment (Contract Art. VI(b)2). It must pay to the Secretary of the Interior $5,000 a year as rent for the first

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[1] 1935 Cal. Stats. Ch. 330.

ten years (Contract Art. VI(b)1). If it earns more than six percent and declares excess dividends, twenty-five percent of the amount so declared must go to the Secretary of the Interior (Contract Art. VI(b)6). During the second ten years, plaintiff is excused from the $5,000 payments and need only pay twenty-two and one-half percent of its excess dividends to the Secretary (Contract Art. VI(c)).

Before further detailing the facts of the case, it is necessary to point out that the Park consists of Yosemite Valley plus a great amount of surrounding territory. The Valley has been the subject of statutory cessions different from the balance of the Park (hereafter called the Park as distinguished from the Valley). We therefore shall consider separately the problems presented by the two cessions.

First.

The Valley.

All of the area in question, including the entire territory comprising California and many western states, was acquired by the United States from Mexico in 1848 by the Treaty of Guadalupe Hidalgo.[2] California was admitted to statehood in 1850, the United States reserving its proprietary rights to the Valley and other unappropriated public lands,[3] *Fort Leavenworth R. R. Co.* v. *Lowe,* 114 U. S. 525, 50 C. J. 887. The Congress gave the Valley to California in trust for public park and recreational purposes June 30, 1864,[4] thus relinquishing the previously reserved federal proprietary rights. In 1891 California enacted a law[5] reading:

> "The State . . . hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may hereafter be ceded or conveyed to the United States, during the time the United States shall be or remain the owner

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[2] 9 Stats. 922.

[3] 9 Stats. 452.

[4] 13 Stats. 325.

[5] 1891 Cal. Stats. 262.

thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein."

By Act of March 3, 1905, the California Legislature did:

> "* * * hereby recede and regrant unto the United States of America * * * the Yosemite Valley * * * and the State of California does hereby relinquish unto the United States of America and resign the trusts created and granted * * *" for public park purposes.

The statute further provided:

> "* * * the same to be held for all time by the United States of America for public use, resort and recreation."

The United States by Act of June 11, 1906,[6] accepted the regrant. There are no other statutes pertaining to the Valley, other than the California statute of 1919, hereinafter referred to, ceding jurisdiction to the federal government over the entire Park which includes the Valley.

The problem now arises, do the recited facts show that exclusive jurisdiction of the Valley is vested in the United States? If they do, of course the State has no right to enforce its liquor laws therein.

We hold that the United States has exclusive jurisdiction of the Valley.

(1) In reference to the statutes granting the Valley to the State and regranting it to the United States, the defendants state at page five of their opening brief:

> "But neither of these acts granted territorial or governmental jurisdiction to the grantee and so may be disregarded."

We agree that the United States had only a proprietary interest in the Valley and that no jurisdiction passed from

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[6] 34 Stats. 831.

the United States to California or vice versa by virtue of the Acts of 1864 and 1905 alone. That much is conceded by plaintiff and by the United States. But we are inclined to heed these statutes, for they have a further significance.

The State regranting act of 1905 taken in conjunction with the California statute of 1891 generally ceding exclusive jurisdiction to the United States in all cases of transfer of land, establishes beyond a doubt that exclusive jurisdiction of the Valley is now in the United States.

(2) The State contends that regardless of what has been said, the State Legislature had no power to give up its taxing authority over the Valley. There is no federal constitutional prohibition against such a relinquishment. No State measure forbidding the transfer of jurisdiction has been cited to us. On the contrary, section 33 of the California Political Code provides for such transfers. What is relied upon is a California constitutional provision forbidding the giving away of the taxing power.[7] In *Yellowstone etc. Co.* v. *Gallatin County*, (C. C. A. 9) 31 F. 2d. 644, a similar argument was examined and found to be without merit. Defendants have simply misapplied a general rule of state sovereignty to a situation in which the principal issue of territorial jurisdiction controls the right to tax. The Supreme Court, in *Standard Oil Co.* v. *California*, 291 U. S. 242, considered the effect of a cession of exclusive jurisdiction over the Presidio in San Francisco by the State to the United States. It was held that the State's right to tax also had been ceded.

(3) It is further argued on behalf of the State that the United States had no power under which it could obtain exclusive jurisdiction of the Valley when the Valley was not purchased with the consent of the State, and was not to be used for the Erection of Forts, Magazines, Arsenals, Dock-Yards and other needful Buildings * * *" as specified in Article I, Section 8, Clause 17 of the federal constitution. It is said in defendants' opening brief (p. 6) that the only manner mentioned in the Constitution for the

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[7] Cal. Const. Art. XIII, Sec. 6.

United States to obtain exclusive jurisdiction of land by the acquisition thereof alone, is that set forth in the quoted clause. The proposition can be conceded, but is far from controlling. We may further concede the next statement made, that when the federal government acquires land and jurisdiction thereof in any other way than that outlined in Article I, Section 8, Clause 17 (in this case by cession), for the purposes mentioned in that clause, the State can make any reservation of jurisdiction it deems desirable short of imposing any conditions inconsistent with the use the United States desires to make of the territory. By the same token, the State can grant exclusive jurisdiction if it fails to impose conditions. As far as the Valley is concerned, that is exactly what occurred. It is sufficient to cite *Standard Oil Co.* v. *California*, above, and *Arlington* v. *Fant*, above, to the effect that exclusive jurisdiction can be obtained by the United States upon cession of land by a state and without purchase by the United States with the consent of the State where the use is one set out in Article I, Section 8, Clause 17.

It is thus seen that the only question involved is whether a State's cession of exclusive jurisdiction to the United States of land used for park or other purposes not enumerated in Article I, Section 8, Clause 17, can be accepted by the latter. And defendants' argument in its essence is that such a procedure is impossible because park purposes are not mentioned in the quoted clause. Defendants' position is not sound. Moreover, it is unsupported by the authorities.

First, there is no constitutional prohibition against states ceding territory or jurisdiction to the United States, nor any constitutional mandate placing the power to cede state territory in the federal government. Therefore such a power, being an inherent incident of sovereignty, must reside in the states, subject to the limitation, immaterial here, of denying a state the right to cede territory to foreign nations without consent of the Congress (*Fort Leavenworth R. R. Co.* v. *Lowe*, above).

Second, the power to acquire jurisdiction by treaty, war, discovery or cession, is an attribute of any sovereignty,

whether it be a limited one or not. *Jones* v. *U. S.*, 137 U. S. 202 at 212.

Third, altho the United States has no express power to accept even limited jurisdiction over ceded territory—yet defendants concede such power, and the courts and history sustain it. *Benson* v. *U. S.*, 146 U. S. 325, 330. Nor can express constitutional permission to accept exclusive jurisdiction by means other than purchase with state consent be found; yet other methods have been sanctioned by practice and the Supreme Court. *Standard Oil Co.* v. *California,* above; *U. S.* v. *Unzeuta,* 281 U. S. 138.

Fourth, in *Chicago etc. Ry.* v. *McGlinn,* 114 U. S. 542 at 546, we find the court saying:

> "* * * it is competent for the legislature of a State to cede exclusive jurisdiction over places needed by the general government in the execution of its powers * * * such jurisdiction necessarily ending when the places ceased to be used for such purposes."

We do not believe that it can be denied that the federal government is here exercising a proper governmental function. Under *U. S.* v. *Butler,* 297 U. S. 1, it could tax to raise money to buy parks under the "general welfare" clause.[8] Park and recreational facilities clearly provide for the general welfare. Likewise, it has never been hinted even remotely that the federal government did not have the power under Article IV, Section 3, Clause 2 to provide for the establishment of parks on land the United States had already acquired, whether by conquest, cession or purchase. We therefore think that the federal government could accept jurisdiction under the McGlinn case doctrine. *Yellowstone Park Transportation Co.* v. *Gallatin Co.*, above; *Rainier National Park* v. *Martin,* 18 F. Supp. 481 lend further support to this view.

For the foregoing reasons it is concluded that the United States can and did accept exclusive jurisdiction over the Valley for park purposes.

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[8] Const. Art. I, Sec. 8, Cl. 1.

(4) We turn then to the problem of whether or not the Twenty-First Amendment permits the State to tax liquor within the Valley. That amendment says:

> "The transportation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Defendants would have us hold that so long as such land is "territorially" within the state, it is immaterial that such land is beyond the jurisdiction of the state, so far as this amendment is concerned. It is argued:

> "* * * the 21st amendment which deals solely with states, territories and possessions of the United States, can only relate to these places territorially and not politically. There is no suggestion in the 21st amendment there were to be areas within states over which such states could not control intoxicating liquors."

We are not convinced that the Twenty-First Amendment serves to extend to states a grant of jurisdiction over territories which formerly they could not control. There is nothing in the Amendment to indicate such a purpose, any more than there is to indicate a granting of power to California to tax liquor sales and traffic in Oregon, which clearly would be absurd. Once a state relinquishes its jurisdiction over territory within its limits, its power over that particular land is gone absolutely. *Standard Oil Co.* v. *California,* above. A state's right to tax liquor is a matter of power and jurisdiction. While the Amendment may have increased the state's power to deal with the problem (see *State Board* v. *Young's Market,* 299 U. S. 59), it did not increase its jurisdiction.

Defendants, by analogy to *State Board* v. *Young's Market,* above, proposed to interpret the Twenty-First Amendment in such a way as to modify normal federal powers of sovereignty insofar as liquor regulation is concerned. In the *Young's Market* case it was held that a beer importer's license fee of $500 imposed by the State of California was not violative of the Commerce Clause or the Equal Protec-

tion Clause of the Fourteenth Amendment. The Supreme Court pointed out that as the Twenty-First Amendment prohibited the "Importation" into a state of intoxicants in violation of the laws thereof, the Commerce Clause to that extent was necessarily and explicitly overruled; and that any classification permitted by the Twenty-First Amendment could not be violative of the Fourteenth.

We think it is straining the Youngs Market case too much to try to apply it to the present controversy where the facts and constitutional provisions involved are so widely divergent. No intent to relinquish the exclusive jurisdiction of the government to the states can fairly be deduced. *Fort Leavenworth R. R. Co.* v. *Lowe*, above.

(5) The State having no jurisdiction within the Valley, it is immaterial whether the plaintiff is or is not a federal instrumentality—in either case the taxing power of California cannot reach it. Similarly, the cases in which the federal government has been permitted to tax state-owned and controlled liquor establishments, and which defendants contend justify a state tax on national liquor agencies, are not in point because the State has no jurisdiction whatsoever within the Valley. Thus *South Carolina* v. *U. S.*, 199 U. S. 437 and like decisions have no bearing on the principal case.

SECOND.

The Park Outside of the Valley.

When in 1890 the United States set aside certain of its public lands to establish the Park,[9] the federal interest was merely proprietary. Jurisdiction of the lands comprising the Park was in the State, where it remained unil 1919. In that year jurisdiction of the Park was offered to the National Government, which had always retained the proprietary interest:[10]

> "Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the Territory which is now or may hereafter be in-

[9] 26 Stats. 650.

[10] 1919 Cal. Stats. 51.

> cluded in * * * 'Yosemite National Park' * * *; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to tax and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; provided, however, that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks."

By Act of June 2, 1920,[11] jurisdiction of the Park was assumed by the United States. The acceptance statute, referring to the provisions of the California Act, said:

> "* * * are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving however, to the said State of California."

The reservations in the California statute were then set out verbatim. None of these statutes referred to or affected the Valley.

(1) What was said about the Valley in relation to the power of California to relinquish its taxing authority over territory ceded to the United States, is equally applicable to the Park. Hence, any voluntary disposal of taxing power in the Park would be valid. We believe, likewise, that what has been said previously in regard to the Twenty-first Amendment is also conclusive as to the Park.

(2) Next we approach the problem of the power of the United States to accept jurisdiction of the Park for recrea-

[11] 41 Stats. 731, 17 U. S. C. A. 57.

tional purposes. Since we have held, in our study of the Valley, that exclusive jurisdiction can be obtained, it follows that any lesser quantum of jurisdiction can also be accepted. *Fort Leavenworth R. R. Co.* v. *Lowe,* above. Under principles established in the Lowe case and reiterated in *Arlington* v. *Fant,* above, the state, in ceding jurisdiction, may impose any conditions or withhold any amount of jurisdiction it desires so long as such reservations do not interfere with the use to which the United States wishes to put the property. In relation to the Park, the State of California had the right to reserve taxing power, not inconsistent with the federal governmental use.

(3) We now pass to a consideration of the taxing power reserved by the State in the Act of 1919 granting jurisdiction of the Park to the United States, and confirmed by the United States in its acceptance statute of 1920.

Reference must be made to the case of *Rainier National Park Co.* v. *Martin* (D. C. Wash. 3 Judges), above, in which similar statutes on the same subject gave rise to a problem closely resembling that involved in the case at bar. Despite the surface similarity of issues, we believe it is possible to distinguish the two cases on at least one important point.

In the Washington case a divided court held that the federal government had consented to the levy of an excise tax on the Rainier National Park Company, which was assumed to be a federal instrumentality. Since the clause which led to this interpretation is the same as the saving clause in the federal acceptance of the California grant, it is important to investigate the reason which persuaded the court to hold as it did. Complete reliance was placed on the case of *Mid-Northern Oil Co.,* v. *Walker,* 268 U. S. 45, which the majority of the court felt to be controlling. What does an examination of that case reveal? A license tax, measured by the total gross value of crude oil produced, was imposed by the State of Montana on a federal instrumentality engaged in mining. The tax was levied under a statute which saved to the state "the right to levy and collect taxes upon improvements, output of mines, *or other rights,* property or assets of any lessee of the United States." (Italics ours.) Clearly the statute included in its broad language the very

tax which the state was collecting. But should such a case control one in which the tax reservation says that the state saves "the right to tax persons and corporations, their franchises and property"? We believe that the answer is "no". The former broad clause covers a license tax; the latter does not. We think that the Washington interpretation of that clause is a strained one, and cannot be applied to the facts of this case.

But granting that the District Court was correct in its ruling, we wish to point out two distinctions between the Washington case and the principal case which we feel should sustain a different holding. In the first place, the California statute differs from the Washington measure of 1901[12] in one important detail. In ceding Yosemite National Park to the federal government, California retained "the right to fix and collect license fees for fishing in said Park." Such an express reservation of the right to collect license fees for one purpose is an indication that the right to collect license fees for all other purposes was renounced. The Washington statute, on the other hand, contains no such reservation.

In the second place—and of fundamental significance—we feel that the nature of the California license tax is sufficiently different from that of the Washington business tax to warrant a different ruling. The California enactment is chiefly regulatory in nature, and is confined to the liquor business; the Washington statute is a revenue measure which covers innumerable trades. While a revenue measure does not preclude the possibility of a clash between sovereignties, it does not invite one as a regulatory measure does. California has ceded the Park to the United States, which has agreed to police it. Now, by reason of the Alcoholic Beverage Control Act, California evidently claims the retention of her police power. Such a claim is violative of the police jurisdiction placed in the hands of the National Government, and is void.

Since the primary purpose of California's tax measure is the regulation of the intoxicating liquor business; since such regulation constitutes an exercise of the police power which

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[12] 1901 Session Laws, c. 92, p. 192, § 1.

is beyond the jurisdiction of the State, the measure cannot bestow upon California the power to collect license taxes from plaintiff for the importation and sale of liquors.

The motion to dismiss the complaint is denied; the motion for the issuance of a temporary injunction will be granted. Plaintiff will prepare and file proposed findings of fact, conclusions of law, and decree.

CURTIS D. WILBUR,
Judge, U. S. Circuit Court of Appeals.
MICHAEL J. ROCHE,
U. S. District Judge.
A. F. ST. SURE,
U. S. District Judge.

Waiver of Reply to Jurisdictional Statement.

Comes now the plaintiff and appellee and waives any and all reply to the appellants' statement of grounds of jurisdiction on appeal and submits forthwith the consideration of the question of jurisdiction upon said statement of appellants.

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Service Admitted Jany. 7, 1938.
BROBECK, PHLEGER & HARRISON,
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Filed Jan. 18, 1938.